F. & D. No. 70-C. Issued June 28, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 451, FOOD AND DRUGS ACT.

ADULTERATION OF CREAM.

On or about April 16, 1910, George M. Kephart, of Derwood, Md., sold and delivered at the Union Station, Washington, D. C., a quantity of alleged cream. Dr. William C. Woodward, health officer of the District of Columbia, acting on authority of the Secretary of Agriculture, caused samples of the above delivery to be procured and analyzed. As the findings of the analyst and report made indicated that the cream was adulterated within the meaning of the Food and Drugs Act of June 30, 1906, the said George M. Kephart was afforded an opportunity for hearing. As it appeared after hearing held that the shipment was made in violation of the act, the said health officer reported the facts to the United States attorney for the District of Columbia.

In due course a criminal information was filed against the said George M. Kephart in the Police Court of the District of Columbia, charging that the cream was adulterated in that a valuable constituent of said article of food, to wit, butter fat, had been left out and abstracted wholly or in part.

On May 12, 1910, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *May 23, 1910.*

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46078—No. 451—10

S. No. 443.
F. & D. No. 1246.

Issued June 28, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 452, FOOD AND DRUGS ACT.

ADULTERATION AND MISBRANDING OF OATS.

On or about February 1, 1910, the Pendleton Grain Company, St. Louis, Mo., shipped from the State of Missouri to the State of Arkansas, one carload of white oats. Analysis of sample of this product made in the Bureau of Chemistry, United States Department of Agriculture showed it to be adulterated within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the shipment was liable to seizure under Section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Eastern District of Arkansas. In due course a libel was filed against the said carload of white oats, charging adulteration of the product within the meaning of the act because it consisted of 9.2 per cent. barley, 6.8 per cent. wheat, 11.2 per cent. debris, weed seed, chaff, etc., and the balance white oats, and was misbranded in that the carload was invoiced, labeled and branded as No. 3 White Oats, which statements were false, misleading and deceptive because they were not white oats but a mixture of white oats, barley, weed seeds, debris, wheat, chaff, etc. Thereupon H. K. Cochran, Little Rock, Ark., made an appearance as claimant, and the case coming on for a hearing, the court rendered its decree of condemnation and forfeiture and ordered that the said product be delivered to claimant upon being branded "White Oats, mixed with weed seed, wheat, barley, chaff, etc." and upon a bond being filed conditioned that the product be not sold in violation of the law of any state, territory or insular possession of the United States.

This notice is given pursuant to Section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *May 23, 1910.*

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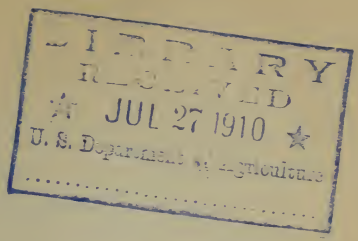
46078—No. 452—10



I. S. No. 3862-b.
F. & D. No. 1253.

Issued July 15, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 453, FOOD AND DRUGS ACT.

ADULTERATION AND MISBRANDING OF OLIVE OIL.

On or about June 23, 1909, the Lucca Olive Oil Importing Company, a corporation of New York, N. Y., shipped from the State of New York to the State of New Jersey a quantity of alleged olive oil labeled "Prodotti di Olii—Olio Soprafino—Fracescani Brand—Olive Oil and Salad Oil." Samples from the above shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report made indicated that the product was adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the said Lucca Olive Oil Importing Company, and the party from whom the samples were procured were afforded opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the Circuit Court of the United States for the Southern District of New York charging the above shipment and alleging that the product was adulterated within the meaning of the act, because it contained no olive oil whatever but merely cottonseed oil substituted wholly for said olive oil, and because said cottonseed oil was colored in a manner to conceal its inferiority, and further charging that the product was misbranded, because the label upon the can in which it was shipped bore the words "Prodotti di Olii—Olio Soprafino—Fracescani Brand" in large type, and in small type the words "Olive Oil and Salad Oil," in such a manner as to give the impression to a purchaser that the contents of

said can were pure olive oil of a high quality, or at least olive oil of a high quality mixed with cottonseed oil, whereas in truth and in fact the contents of said can were cottonseed oil, colored in a manner to conceal its inferiority, containing no olive oil whatever.

The defendant entered a plea of guilty to this information on April 6, 1910, and the court imposed a fine of $50.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *May 23, 1910.*

I. S. No. 4065–b.
F. & D. No. 1326.

Issued July 15, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 454, FOOD AND DRUGS ACT.

MISBRANDING OF A DRUG PRODUCT—"MRS. GRAHAM'S DANDRUFF CURE."

On or about February 26, 1909, Mrs. Gervaise Graham, of Chicago, Ill., shipped from the State of Illinois to the State of Tennessee a quantity of a drug product labeled "Mrs. Graham's Dandruff Cure." Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report thereon indicated the product to be misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded Mrs. Gervaise Graham an opportunity for hearing. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Northern District of Illinois charging the above shipment and alleging that the product was misbranded within the meaning of the act, in that the label on the bottles containing the product, and the circular accompanying said bottles, bore the false and misleading statements that the product was "a permanent cure for dandruff," and that it was "pure and harmless," when as a matter of fact, it was not a permanent cure for dandruff and was not pure and harmless.

On May 16, 1910, the defendant entered a plea of guilty to this information and the court imposed a fine of $25.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *May 23, 1910.*

48965°—No. 454—10

S. No. 226.
F. & D. No. 590.

Issued July 15, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 455, FOOD AND DRUGS ACT.

MISBRANDING OF CANNED TOMATOES.

(SHORT MEASURE.)

On or about July 22, August 10, and November 18, 1908, Isador Levin, trading as S. H. Levin's Sons, Leipsic, Del., shipped from the State of Delaware to the State of Pennsylvania 2,300 cases of canned tomatoes, each of which cases was labeled: "The Climax Tomatoes. ½ doz. gal. cans. S. H. Levin's Sons, Leipsic, Del." Examination of samples of this product made by the Bureau of Chemistry, United States Department of Agriculture, showed it to be misbranded within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the shipment was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Eastern District of Pennsylvania.

On May 14, 1909, a libel was filed in the District Court of the United States for said District against said 2,300 cases, charging the above shipment, alleging the misbranding of the product in that the label above quoted represented each of the cans in said 2,300 cases to contain 1 gallon of the product, when, as a matter of fact, each can contained only $\frac{8}{10}$ gallon, and praying seizure, condemnation, and forfeiture. On the next day Isador Levin, trading as S. H. Levin's Sons, filed a claim to said 2,300 cases.

On May 17, 1909, the court entered a decree declaring the product to be misbranded as alleged in the libel, and decreeing its condemnation and forfeiture to the United States, with a proviso, however, that said product be delivered to the above-mentioned claimant upon

his paying the costs of the proceedings and executing and delivering a good and sufficient bond in the sum of $2,500, conditioned that the product be not sold or otherwise disposed of in violation of law. On the same date the claimant paid the costs and executed and delivered the required bond, and the product was restored to him in accordance with the terms of said decree.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 8, 1910.*

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S. No. 213.
F. & D. No. 575.

Issued July 15, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 456, FOOD AND DRUGS ACT.

MISBRANDING OF CANNED PINEAPPLE.

(SHORT WEIGHT.)

On or about March 26 and June 27, 1908, there were shipped from New York City to Philadelphia, Pa., 113 packages of canned pineapple, each package containing 48 cans of the product. Thirty-four of said packages were labeled "B. S. 58 1½ lbs. Cubes" on the outside of the package, and each of the cans contained therein bore the label "Singapore Chop Tan Hin Brand Pineapple Cubes. The Paul-Taylor-Brown Co., Importers, New York;" 32 of said packages were labeled "B. S. 1½ lbs. Chunk" on the outside of the package, and each of the cans contained therein was labeled "Singapore Chop Tan Hin Pineapple Chunk. The Paul-Taylor-Brown Co., Importers, New York," 24 of said packages were labeled "Chop Tan Hin Sliced Pineapple. The Taylor-Brown Co., New York" on the outside of the package, and each of the cans contained therein was labeled "S. W. H. 58 1¾ lbs. Sliced Smooth;" and 23 of said packages were labeled "102 1¾ lbs. Sliced Malay New York" on the outside of the package, and each of the cans contained therein was labeled "Malay Brand Singapore Pineapple Delicious Slices Packed for U. H. Dudley & Co., Distributers, New York, Philadelphia, and Boston. Pineapples packed in Singapore, Strait Settlements."

Examination of samples of this product, made by the Bureau of Chemistry, United States Department of Agriculture, showed it to be misbranded within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the shipments were liable to seizure under section 10 of the act, the Secretary of Agriculture reported the

facts to the United States attorney for the Eastern District of Pennsylvania.

On May 4, 1909, a libel was filed against the said 113 packages of pineapple, in the District Court of the United States for said district, charging the above shipments and alleging misbranding of the product, in that the cans contained in the 66 packages first above mentioned did not each contain 1½ pounds, as represented on the respective labels, but only 19.93 ounces each; in that the cans contained in the 24 packages next above mentioned did not each contain 1¾ pounds, as represented in the label thereon, but only 21.58 ounces each; and in that the cans contained in 23 packages next above mentioned did not each contain 1¾ pounds, as set forth in the label thereon, but only 21.65 ounces each.

On May 15, 1909, the firm of Reese, Parvin & Co., Philadelphia, Pa., entered a claim to the above mentioned 113 cases, and on May 17, 1909, the court entered a decree of condemnation and forfeiture declaring the product to be misbranded as alleged in the libel, with the proviso, however, that said product be delivered to the above mentioned claimants upon their paying the costs of the proceedings and executing a good and sufficient bond in the sum of $1,000, conditioned that the product be not sold or otherwise disposed of in violation of law. On the same day the claimants paid the costs and delivered the required bond, and the product was delivered to them in accordance with the terms of the decree.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 8, 1910.*

S. No. 471.
F. & D. No. 1309.

Issued July 15, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 457, FOOD AND DRUGS ACT.

ADULTERATION AND MISBRANDING OF EVAPORATED APPLES.

During the month of October, 1909, The Wallerstein Produce Co., Richmond, Va., shipped from the State of Virginia to the State of Ohio 12 cases of evaporated apples, each containing 48 cartons. The product was labeled "Dime Brand Choice Evaporated Apples. Packed by Wallerstein Produce Co., Richmond, Va."

Examinations of samples of this product made by the Bureau of Chemistry, United States Department of Agriculture, showed it to be adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the shipment was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Southern District of Ohio.

In due course a libel was filed against the said 12 cases of evaporated apples, in the District Court of the United States for said district, charging the above shipment and alleging the product to be adulterated, in that it consisted in part of a filthy, decomposed vegetable substance, to wit, moldy and rotten portions of apples, worms, worm excreta, seeds, cores, and general apple waste product; and to be misbranded, in that the label above quoted represented the product to consist of "Choice Evaporated Apples," whereas, in truth and in fact, the product was not choice but of inferior quality, contaminated and decomposed. No claimant having appeared, a decree pro confesso was rendered by the court, finding that all of the material allegations of the libel were true, condemning the product, and directing the United States marshal to destroy the same forthwith, which was done.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 8, 1910.*

48965°—No. 457—10

S. No. 186.
F. & D. No. 508.

Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 458, FOOD AND DRUGS ACT.

MISBRANDING OF TABLE SYRUP.

On or about December 21, 1908, the Corn Products Refining Company, a corporation, Granite City, Ill., shipped from the State of Illinois to the State of Missouri 78 cases of canned syrup, 61 of which contained 24 cans each, labeled "Monkey Brand Rock Table Syrup, 80 per cent. Corn Syrup, 20 per cent. Granulated Sugar Syrup, 2½ pounds in weight. S. H. Bieler Grocery Company, Sedalia, Mo.," the remaining 17 cases also containing 24 cans each, bearing identical labels except with the word "Five" instead of the words "Two and a half." Analysis of samples of this product made in the Bureau of Chemistry, United States Department of Agriculture, showed it to be misbranded within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the shipment was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Western District of Missouri.

In due course a libel was filed in the District Court of the said district against the said 78 cases of canned syrup, charging the above shipment, and alleging that the product was misbranded within the meaning of the act, in that the statements in the label above set forth that the product contained "80 per cent. corn syrup and 20 per cent. granulated sugar syrup" was false and misleading and tended to deceive the purchaser, because as a matter of fact the said product contained more corn syrup and less granulated sugar syrup than was represented by said labels. Thereupon the said Corn Products Refining Company intervened and filed a claim to the product, and the case coming on for hearing, the court rendered a decree, that the product should be delivered to said claimant if it should pay the costs of proceedings and execute and deliver a good and sufficient bond, conditioned that the product be not sold or otherwise disposed of contrary to law. Said bond having been filed and the costs paid as above decreed, the goods were forthwith delivered to claimant.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

W. M. Hays,
Acting Secretary of Agriculture.

Washington, D. C., *July 1, 1910.*

52099°—No. 458—10

I. S. No. 26937-a.
F. & D. No. 1193.

Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 459, FOOD AND DRUGS ACT.

ADULTERATION AND MISBRANDING OF LAUDANUM.

On or about December 9, 1908, the National Spice Company, a corporation, New York City, shipped from the State of New York to the State of Connecticut a consignment of a drug product labeled "The National Brand Laudanum, Alcohol 45 per cent, opium 45.6 per cent. gr. per oz., U. S. P. Serial No. 589, The National Spice Company, formerly Dr. James & Bro., New York." Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the product was adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the National Spice Company, and the dealer from whom the samples were purchased, opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the Circuit Court of the United States for the Southern District of New York, charging the above shipment, and alleging that the product was adulterated within the meaning of the act in that said product differed from the standard of strength, quality, and purity as determined by the test laid down in the United States Pharmacopœia for laudanum, official at the time of investigation, and that the actual standard of strength, quality, and purity was not plainly and correctly stated on the container in which said drug was shipped, and further charging that the product was misbranded in that the label thereon failed to bear a correct statement of the quantity of alcohol and opium contained therein.

On May 23, 1910, the defendant entered a plea of guilty to the information and the court imposed a fine of $50.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52099°—No. 459—10

F. & D. No. 71-C. Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 460, FOOD AND DRUGS ACT.

ADULTERATION OF MILK.

On or about April 30, 1910, Hiram H. Smith, of Doubs, Md., sold and delivered at the Union Station, Washington, D. C., a quantity of milk. Dr. William C. Woodward, health officer of the District of Columbia, acting under the authority of the Secretary of Agriculture, caused a sample from the above delivery to be procured and analyzed. As the findings of the analyst and report made indicated that the milk was adulterated within the meaning of the Food and Drugs Act of June 30, 1906, the said Hiram H. Smith was afforded an opportunity for hearing, and as it appeared after the hearing held that this sale was in violation of said act, the said health officer reported the facts to the United States attorney for the District of Columbia.

In due course a criminal information was filed against the said Hiram H. Smith in the Police Court of the District of Columbia, charging that the milk was adulterated, in that a valuable constituent of said article of food, to wit, butter fat, had been left out or abstracted wholly or in part.

On May 21, 1910, the defendant entered a plea of guilty to the information and the court imposed a fine of $10.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

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52099°—No. 460—10

I. S. No. 26747-a.
F. & D. No. 1056.

Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY

NOTICE OF JUDGMENT NO. 461, FOOD AND DRUGS ACT.

MISBRANDING OF VERMOUTH.

On or about June 26, 1909, Samuel J. Bloomingdale, Hiram Bloomingdale, and Irving I. Bloomingdale, doing business under the firm name and style of Bloomingdale Brothers, New York City, shipped from the State of New York to the State of New Jersey a consignment of a certain drug product labeled: "Vermouth Excelsior M. van Doorninck Mahler & Cie Bordeaux, M. B. & Cie." Samples from this shipment were procured and analyzed by the Bureau of Chemistry of the United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded said Bloomingdale Brothers, and the dealer from whom the product was purchased, opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the Circuit Court of the United States for the Southern District of New York against said Bloomingdale Brothers charging the above shipment and alleging that the product was misbranded within the meaning of the act, in that the bottle in which said product was shipped as aforesaid failed to bear a statement on its label of the quantity or proportion of alcohol contained therein, when as a matter of fact said product contained more than 16 per cent of alcohol; and in that the statements above set forth regarding the contents of said bottle, to wit, that said product "would strengthen the mind," "increase the organic energy," and "was a safe preventive of fever and cholera" were all false and misleading.

On May 23, 1910, the defendants entered a plea of guilty to the information and the court imposed a fine of $100.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

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52099°—No. 461—10

S. No. 537.
F. & D. No. 1474.

Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 462, FOOD AND DRUGS ACT.

ADULTERATION OF FROZEN EGGS.

On or about May 3, 1910, the Iowa Butter and Eggs Company, Council Bluffs, Iowa, shipped from the State of Iowa to the State of New York seven cases of frozen eggs. Examination of samples of this product made by the Bureau of Chemistry, United States Department of Agriculture, showed it to be adulterated within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the shipment was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Southern District of New York.

In due course a libel was filed in the Circuit Court of said district against the said seven cases of frozen eggs, charging the above shipment and alleging that the product was adulterated within the meaning of the act because it consisted in whole or in part of a filthy, decomposed, and putrid animal substance, and praying seizure, condemnation, and forfeiture thereof.

On May 24, 1910, the case coming on for hearing and there being no claimant of record the court rendered its decree, condemning and forfeiting the product to the United States, and ordering its destruction forthwith by the United States marshal of said district.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52099°—No. 462—10

I. S. No. 22928-A.
F. & D. No. 1003.

Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 463, FOOD AND DRUGS ACT.

MISBRANDING OF STOCK FEED—"SHORTS."

On or about January 15, 1909, T. R. Read and J. S. Read, doing business under the firm name and style of Read Brothers, operating the Morristown Mills, Morristown, Tenn., shipped from the State of Tennessee to the State of North Carolina a consignment of stock feed. Samples from the above shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report made indicated that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the said Read Brothers, and the party from whom the samples were procured, were afforded opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Eastern District of Tennessee, charging the above shipment, and alleging that the product was misbranded within the meaning of the act, in that it was labeled, "Shorts, 80 lbs., Guar. Analysis: Protein 16.50 per cent. minimum, Fat 6.00 per cent. minimum, Fibre 6.00 per cent. maximum; Mfg. by Read Brothers, Morristown, Tenn.", when in fact less protein and less fat were present in said product as shown by analysis.

The case coming on for hearing the United States attorney discontinued as to defendant T. R. Read, and thereupon defendant J. S. Read entered a plea of guilty to the information and the court imposed a fine of $25 and costs of prosecution.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

W. M. Hays,
Acting Secretary of Agriculture.

Washington, D. C., *July 1, 1910.*

52099°—No. 463—10

I. S. No. 22931-a.
F. & D. No. 932.

Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 464, FOOD AND DRUGS ACT.

MISBRANDING OF MIXED FEED.

On or about March 8, 1909, Jesse B. Huff, doing business under the firm name and style "Bridgeport Mills", Bridgeport, Tenn., with L. H. Kelly as manager, shipped from the State of Tennessee to the State of North Carolina a consignment of stock feed. Samples from the above shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report made indicated that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the said Jesse B. Huff and L. H. Kelly, and the party from whom the samples were procured, were afforded opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Eastern District of Tennessee, charging the above shipment and alleging that the product was misbranded within the meaning of the act in that it was labeled "Mixed Feed, manufactured by the Bridgeport Mills Bridgeport, Tenn., Guar. Analysis: Protein 13.00 per cent.; Fat 4.00 per cent.; Fibre 8.00 per cent.—80 lbs.", whereas in fact said product contained but 8.71 per cent. protein, and no fat at all.

The case coming on for hearing, the United States attorney discontinued as to defendant Jesse B. Huff, and thereupon defendant L. H. Kelly entered a plea of guilty to the information and the court imposed a fine of $25 and costs of prosecution.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

W. M. Hays,
Acting Secretary of Agriculture.

Washington, D. C., *July 1, 1910.*

52099°—No. 464—10

I. S. No. 22931-a.
F. & D. No. 932.

Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 464, FOOD AND DRUGS ACT.

MISBRANDING OF MIXED FEED.

On or about March 8, 1909, Jesse B. Huff, doing business under the firm name and style "Bridgeport Mills", Bridgeport, Tenn., with L. H. Kelly as manager, shipped from the State of Tennessee to the State of North Carolina a consignment of stock feed. Samples from the above shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report made indicated that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the said Jesse B. Huff and L. H. Kelly, and the party from whom the samples were procured, were afforded opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Eastern District of Tennessee, charging the above shipment and alleging that the product was misbranded within the meaning of the act in that it was labeled "Mixed Feed, manufactured by the Bridgeport Mills Bridgeport, Tenn., Guar. Analysis: Protein 13.00 per cent.; Fat 4.00 per cent.; Fibre 8.00 per cent.—80 lbs.", whereas in fact said product contained but 8.71 per cent. protein, and no fat at all.

The case coming on for hearing, the United States attorney discontinued as to defendant Jesse B. Huff, and thereupon defendant L. H. Kelly entered a plea of guilty to the information and the court imposed a fine of $25 and costs of prosecution.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

W. M. Hays,
Acting Secretary of Agriculture.

Washington, D. C., *July 1, 1910.*

52099°—No. 464—10

I. S. No. 17512-a.
F. & D. No. 706.

Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 465, FOOD AND DRUGS ACT.

MISBRANDING OF DRUG PRODUCT—"RAMON'S PEPSIN HEADACHE CURE."

On or about January 29, 1909, the Brown Manufacturing Company, a corporation, Greeneville, Tenn., shipped from the State of Tennessee to the State of Michigan a consignment of a drug product labeled "Ramon's Pepsin Headache Cure." Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the Brown Manufacturing Company, and the dealer from whom the samples were purchased, opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Eastern District of Tennessee against said Brown Manufacturing Company and Henry R. Brown, president of said corporation, charging the above shipment and alleging that the product was misbranded within the meaning of the act, in that the label on the product represented it to contain pepsin as a constituent element, which representation was false and misleading, as pepsin was not present therein in any perceptible quantity; in that said label represented the product to be a "pepsin headache cure," which statement was false and misleading, because it was not a cure, the product wholly lacking the power to effect a cure; in that a slip of paper inclosed with the product represents it to contain pure pepsin and soda combined with acetanilide and caffein and that one tablet "will ordinarily cure," which statements were false and misleading, the preparation not containing sufficient pure pepsin to effect a cure; in that the preparation contains acetanilide, and the label thereon does not contain a true and correct statement

of the quantity or proportion of acetanilide contained therein, as required by section 8 of the act.

The case coming on for hearing, the United States attorney discontinued as to defendant Henry R. Brown, and thereupon the Brown Manufacturing Company entered a plea of guilty to the information and the court imposed a fine of $10 and costs of prosecution.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

O

I. S. No. 8704-b.
F. & D. No. 1241.

Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 466, FOOD AND DRUGS ACT.

ADULTERATION AND MISBRANDING OF "ROCOCOLA."

(SOFT DRINK CONTAINING CAFFEINE AND COCAINE.)

On or about October 15, 1909, the Lehman-Rosenfeld Company, a corporation, Cincinnati, Ohio, shipped from the State of Ohio to the State of Kentucky a consignment of a food product labeled: "Rococola." Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the product was adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the Lehman-Rosenfeld Company, and the dealer from whom the samples were purchased, opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Southern District of Ohio against the said Lehman-Rosenfeld Company, charging the above shipment and alleging that the product was adulterated within the meaning of the act in that it contained, in addition to the ingredients mentioned on its label, certain added deleterious ingredients, to wit, caffeine and cocaine, which added ingredients rendered said article of food injurious to health; and further charging the misbranding of the product, in that the label thereon failed to bear a statement of the quantity or proportion of caffeine and cocaine contained in said article of food.

On May 16, 1910, the defendant entered a plea of guilty and the court imposed a fine of $50 and costs of prosecution.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52099°—No. 466—10

I. S. No. 3475-b.
F. & D. No. 1341.

Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 467, FOOD AND DRUGS ACT.

MISBRANDING OF DRUG PRODUCT—"ROCK CANDY DRIPS AND WHISKY."

On or about December 4, 1909, Hyer S. Rosenthal and C. H. Rosenthal, doing business under the firm name and style of H. Rosenthal & Son, Cincinnati, Ohio, shipped from the State of Ohio to the State of New York a consignment of a drug product labeled "Rock Candy Drips and Whisky." Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded H. Rosenthal & Son, and the dealer from whom the samples were purchased, opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Southern District of Ohio, charging the above shipment and alleging that said drug product was misbranded within the meaning of the act, in that it contained 27.2 per cent by volume of alcohol, while the labels on the bottles and packages containing the product failed to bear a statement of the quantity or proportion of alcohol contained therein.

On May 16, 1910, the defendants entered a plea of guilty to the information, and the court imposed a fine of $10 and costs of prosecution.

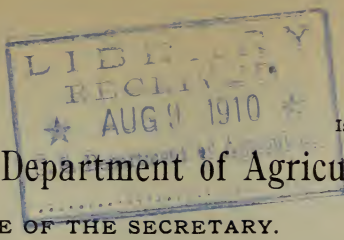
This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52099°—No. 467—10

F. & D. No. 969.
S. No. 353.



Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 468, FOOD AND DRUGS ACT.

ADULTERATION AND MISBRANDING OF STOCK FEED—"BOSS CHOP FEED."

On or about October 19, 1909, the Great Western Cereal Company, of Chicago, Ill., shipped from the State of Virginia to the State of Pennsylvania 800 bags of a food product labeled "Boss Chop Feed." Analyses of samples of this product by the Bureau of Chemistry, United States Department of Agriculture, showed that it was adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the shipment was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Eastern District of Pennsylvania. In due course a libel was filed against the said 800 bags of feed, in the District Court of the United States for said district, and subsequently amended, charging the above shipment and alleging the product to be adulterated, in that oat hulls had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength, and that said oat hulls had been substituted in part for the product; and further charging the product to be misbranded, in that the label thereon represented the product to be made from corn feed, oats, oat middlings, and oat feed, whereas, in truth and in fact, the said product was not made wholly from these ingredients, but contained in addition thereto upward of 10 per cent of oat hulls in excess of the proportion of said oat hulls which would normally be present from the proportion of whole oats actually contained in the said feed product, and in that the label thereon represented the product to contain 10 per cent crude protein and 9 per cent crude fiber, when, as a matter of fact, it contained less than 9 per cent crude protein and upward of 10 per cent crude fiber, such statements being false and misleading and tending to deceive the purchaser. Thereupon the Great Western Cereal Company filed an answer setting up claim to the 800 bags of feed in question, admitting the allegations above set forth, except the one as to the discrepancy

between the amount of protein and fiber represented in the label and that actually found by analysis, averring, however, that there was no intention of violating the laws of the United States in such admitted misbranding, and praying that the 800 bags be delivered to said claimant upon the payment by it of the costs of this action, and the filing of a good and sufficient bond, conditioned that said 800 bags of feed should not be sold, shipped, or otherwise disposed of in violation of the laws of the United States.

On December 15, 1909, the court, being fully informed in the premises, entered its decree of condemnation and forfeiture, in substance and form as follows:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA
v.
800 BAGS OF FEED PRODUCT.

No. 11 of 1909
Libel for Condemnation.

Before McPHERSON, J.

AND NOW, to wit: this sixth day of December, A. D. 1909, on motion of J. Whitaker Thompson, Esq., Attorney of the United States for the Eastern District of Pennsylvania, Elton J. Buckley, Esq., Attorney for the Great Western Cereal Company, the claimant in the above entitled cause, being present and consenting thereto, and it appearing to the Court that upon the libel filed therein on the 23rd day of October, A. D. 1909, a warrant of attachment was duly issued and served, and the respondent was cited to appear on the 12th day of November, A. D. 1909, that by virtue of said warrant the United States Marshal for the Eastern District of Pennsylvania seized the property mentioned in said libel, to wit: 800 bags of feed product, and branded or set forth in said libel, the said property having been in the possession and custody of the said claimant; and that under date of December 4, 1909, the said respondent filed an answer to said libel admitting in part the averments therein, but denying any intention of violating the laws of the United States, and consenting to the prayer thereof and agreeing to the condemnation of said property.

IT IS ORDERED, ADJUDGED AND DECREED, That the said property, to wit: 800 bags of feed product, labeled and branded as set forth in said label, is misbranded in violation of the Act of Congress approved the thirtieth day of June, A. D. 1906, as set forth in said libel.

And it is further ordered that the said property, to wit: the said 800 bags of feed product, labeled and branded as set forth in said libel, be and the same is hereby condemned and ordered to be disposed of by sale as prayed for in the said libel, and as provided for in the said Act of Congress approved the thirtieth day of June, A. D. 1906.

And it is further ordered that the proceeds of said sale, less the legal costs and charges, shall be paid into the Treasury of the United States.

PROVIDED, HOWEVER, that upon the payment of all of the costs of the proceedings herein, and upon the execution and delivery to the libellant by the said Great Western Cereal Company, of a good and sufficient bond in the sum of Two Thousand Dollars, conditioned that the said 800 bags of feed product, labeled and branded as set forth in said libel, shall not be sold or otherwise disposed of contrary to the provisions of said Act of Congress approved the thirtieth day of June, A. D. 1906, or the laws of any State, Territory, District, or insular possession, the said Marshal shall

redeliver the said 800 bags of feed product, labeled and branded as set forth in said libel, to the said Great Western Cereal Company, in lieu of disposing of the said property by sale as aforesaid, the said costs to be paid and the said bond to be filed herein, if at all, within ten days from the date of this Order.

Said bond having been filed and the costs paid, as above decreed, the goods were forthwith delivered to claimant.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

O

I. S. Nos. 3138-a and 12787.
F. & D. Nos. 353 and 521. Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 469, FOOD AND DRUGS ACT.

MISBRANDING OF TABLE SYRUP.

On or about December 13, 1907, the Marshalltown Syrup and Sugar Company, Marshalltown, Iowa, shipped from the State of Iowa to the State of Nebraska a consignment of a food product labeled "Dickinson's Maple and Cane Syrup," and on December 14, 1907, shipped from the State of Iowa to the State of Colorado a consignment of a food product labeled "Eastern Star Maple and Cane Syrup."

Samples from these shipments were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report made indicated that the products were misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the Marshalltown Syrup and Sugar Company, and the dealers from whom the samples were procured, opportunities for hearings. As it appeared after hearings held that said shipments were made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Southern District of Iowa, charging the above shipments and alleging the product to be misbranded within the meaning of the act, in that the labels above quoted were false and misleading, causing the purchaser to believe the chief ingredients of said products to be maple syrup, when as a matter of fact said products contained less than 50 per cent maple syrup.

Upon arraignment, the defendant entered a plea of guilty to the information and the court imposed a fine of $20 and costs of prosecution.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

O

52100°—No. 469—10

I. S. No. 8436-b.
F. & D. No. 1262.

Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 470, FOOD AND DRUGS ACT.

MISBRANDING OF "MANANA GLUTEN BREAKFAST FOOD."

On or about September 14, 1909, The Health Food Company, a corporation, New York City, shipped from the State of New York to the State of Pennsylvania a quantity of a food product labeled "Health Food Manana Gluten Breakfast Food. The Health Food Company, New York." Samples of this product were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report made indicated that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded said Health Food Company, and the dealer from whom the samples were procured, opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the Circuit Court of the United States for the Southern District of New York, charging the above shipment and alleging that the product was misbranded, in that its label bore the following statement, among others, "It has accomplished a great work with the sick," such statement being false and misleading and tending to deceive the purchaser into believing that the product was of value for medicinal purposes, when as a matter of fact it was nothing more than ordinary wheat bread.

Upon arraignment, Dr. Frank Fuller, president of the said Health Food Company, entered a plea of guilty to this information and the court suspended sentence.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

O

52100°—No. 470—10

I. S. No. 25105-a.
F. & D. No. 904.

Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 471, FOOD AND DRUGS ACT.

ADULTERATION AND MISBRANDING OF CANNED CORN.

On or about June 10, 1909, Louis Rosen and M. J. Flarsheim, doing business under the firm name of Rosen & Flarsheim, St. Louis, Mo., shipped from the State of Missouri to the State of Illinois a consignment of a food product labeled "Spring Garden Brand Sugar Corn, packed by the Spring Garden Canning Factory, Spring Garden, Iowa." Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report made indicated that the product was adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded said Rosen & Flarsheim, and the dealer from whom the samples were purchased, opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Eastern District of Missouri, charging the above shipment and alleging that the product was adulterated in that it consisted in part of a filthy, decomposed, and putrid animal substance, and further alleging the product to be misbranded in that the label above set forth represented the product to have been packed by the Spring Garden Canning Factory, at Spring Garden, Iowa, when as a matter of fact it was not packed by said factory nor at said place. The defendants entered a plea of not guilty to the count of the information charging adulteration, and a plea of guilty to the count charging misbranding.

On May 16, 1910, the case was called for trial before a jury and, by direction of the court, a verdict of not guilty on the adulteration

charge was returned. The court imposed a fine of $200 and costs of prosecution on the misbranding charge.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

O

471

I. S. No. 4808-b.
F. & D. No. 1236.

Issued August 8, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 472, FOOD AND DRUGS ACT.

MISBRANDING OF OLIVE OIL.

On or about June 18, 1909, Swift & Co., a corporation of Chicago, Ill., shipped from the State of Illinois to the State of Massachusetts a consignment of a food product labeled "Specialta Olio di Prima Qualita." Samples from this shipment were procured and analyzed by the Bureau of Chemistry of the United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded Swift & Co., and the dealer from whom the samples were purchased, opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

On March 14, 1910, a criminal information was filed in the District Court of the United States for the Northern District of Illinois against the said Swift & Co., charging the above shipment and alleging that the product was misbranded within the meaning of the act, in that the label quoted was false and misleading, because said preparation was not an oil of the first quality, that is to say, an olive oil for table use, but, on the contrary, was an artificial preparation consisting of cotton-seed oil.

On March 19, 1910, the defendant entered a plea of not guilty to the above information, but subsequently withdrew said plea and substituted therefor a plea of nolo contendere. The case came on for hearing on May 24, 1910, and the court imposed a fine of $200 and costs.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52100°—No. 472—10

F. & D. No. 224.
I. S. No. 1636.
Issued August 13, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 473, FOOD AND DRUGS ACT.

SUPPLEMENT TO NOTICE OF JUDGMENT NO. 80.

MISBRANDING OF SALAD OIL.

On March 26, 1909, Guido Brina was tried, convicted, and fined $100 in the Circuit Court of the United States for the Southern District of New York on the charge of shipping in interstate commerce a quantity of oil labeled "Olio per Insalata Sopraffino Vival Brand Cotton Salad Oil Extra Qualita," which was misbranded because the statements on the above label in the Italian language, the English meaning of which is "salad oil, superfine, extra quality," were misleading and deceptive, tending to deceive and mislead Italian purchasers into believing that said oil was a superfine olive oil manufactured in Italy, whereas, in fact, said oil was not olive oil and was not manufactured in Italy. The facts of the above case are set out more fully in Notice of Judgment No. 80 of this Department.

Thereafter the defendant took an appeal from the above judgment to the United States Circuit Court of Appeals for the Second District. The following is the assignment of errors on which the appeal is based:

ASSIGNMENT OF ERRORS.

THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

GUIDO BRINA, *Plaintiff in Error*,
against
UNITED STATES, *Defendant in Error*. } Assignment of Errors. 99.

Now comes the defendant the plaintiff in error herein and in connection with his petition for a Writ of Error herein and makes the following assignment of errors which he says occurred upon the trial:

First. The Court erred in permitting the witness James C. Duff to answer the following question: "Will you examine this can which I hand you here. Is that one of the three cans purchased by you at that time?" and in overruling defendant's objection thereto.

Second. The Court erred in permitting the witness Herman Lind to answer the following question: "How was it that Mr. Brina happened to come there on that day?" and in overruling the defendant's objection thereto.

Third. The Court erred in permitting the witness Ernest Petrucci to answer the following question: "To what class of persons do you sell that oil?" and in overruling the defendant's objection thereto.

Fourth. The Court erred in permitting the said witness Ernest Petrucci to answer the following question: "During your experience as a grocer, have you sold or has there come into your possession any cans of salad oil labeled in the Italian language, Cotton-seed oil?" and in overruling the defendant's objection thereto.

Fifth. The Court erred in permitting said witness Petrucci to answer the following question: "What kind of oils do you sell for salad oil in the Italian trade?" and in overruling the defendant's objection thereto.

Sixth. The Court erred in permitting the said witness Petrucci to answer the following question: "Is there on the market packed up in cans or bottles or other small containers for the retail trade, as far as you know, any oil for salad use labeled Olio de Cottene?" and in overruling the defendant's objection thereto.

Seventh. The Court erred in permitting the following colloquy between Assistant District Attorney Bird, the Court and the attorney for the defendant in open Court and in the hearing in the presence of the jury. to wit:

Mr. Bird: I want to endeavor to show that the Italians of this community are generally utterly ignorant of the existence of cotton seed oil and of its use as salad oil and it cannot be sold to them as salad oil.

The Court: I think it comes pretty near being a notorious fact that salad oil means olive oil.

Mr. Bird: If your Honor will take judicial notice of that and charge the jury——

The Court: I certainly shall take judicial notice of that fact; it is prima facie salad oil means olive oil.

Mr. Wasserman: I take exception to your Honor's ruling on that.

The Court: I so hold, that it is a fact that I may take judicial notice of, that salad oil means olive oil.

Mr. Wasserman: If that is the situation that practically breaks down our entire defense. Our contention is that salad oil does not necessarily mean olive oil, especially in view of the fact that there is a label.

The Court: Then that simplifies the matter very much. Of course, you may introduce evidence to upset the presumption raised by the fact, which I am sure is notorious, and that would transfer this to rebuttal. I feel quite sure and so hold, that any gentleman who advances the proposition that salad oil in common thought, within the ordinary rules of the statute means cotton seed oil among others, has the burden of proof.

Mr. Wasserman: We do not contend that it means cotton seed oil by any means. It simply means that oil can be used for salad purposes. We label it later on as cotton oil.

The Court: It appears to be in evidence that the Italian words which are on Mr. Brina's product, Olio per Insalata, is or means salad oil.

Mr. Wasserman: No, that is not the interpretation in the indictment——

The Court: I am talking about the testimony of Mr. Lind. I understood Mr. Lind to testify that it has been stated in his presence by Brina that the translation of those words, Olio per Insalata, means salad oil. But not olive oil. The literal translation means salad oil. Now, then, I hold as a notorious fact that prima facie salad oil means olive oil. Now, if you are going to attack that prima facie presumption, it is up to you to produce the evidence.

Mr. Wasserman: May I call your attention to the fact that there is no charge in the indictment that Olio per Insalata means or is understood to be olive oil? We are not prepared to meet any such interpretation as that.

The Court: The sense of the information is that the words "Salad Oil" expressed in the Italian language is calculated to deceive persons who habitually use Italian oil, because in effect salad oil means olive oil. This statute is in English, the official language of this Court, and I hold that salad oil prima facie is olive oil. Now, if it

means something else in Italian, and if it means something else because of recent events which have perhaps rendered olive oil more difficult to obtain or introduce other food elements which have come to be known as salad oil among other things you can prove it; you are entirely at liberty to prove it, but I do not think it is incumbent on the prosecution to interpret the words Olio per Insalata any further than to show that when translated it means salad oil.

Mr. Wasserman: Will your Honor note my exception?

Eighth. The Court erred in denying the defendant's motion made at the close of the government's case to dismiss the information herein.

Ninth. The Court erred in denying the defendant's motion made at the close of the defendant's case to dismiss the information herein.

Tenth. The Court erred in allowing the case to go to the jury and in not directing a verdict of not guilty.

Eleventh. The Court erred in charging the jury as follows: "I think also it is a matter of common knowledge that salad oil prima facie imports olive oil; that is what the world has been accustomed to regard as salad oil."

Twelfth. The Court erred in charging the jury as follows: "And it has been argued to you, and I think it is a fair inference that since it goes into such hands it went into the possession, and to be used, by people of, to say the very least, a very moderate degree of education."

WHEREFORE, the plaintiff in error prays that the judgment of the Circuit Court for the Southern District of New York, Criminal Branch term, may be reversed and the verdict set aside, and a new trial ordered.

Thereafter the case was heard on appeal, by the Circuit Court of Appeals for the Second Circuit, and the judgment of the trial court was affirmed. The opinion of the appellate court, delivered by Mr. Justice Lacombe, is as follows:

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT.

Before LACOMBE, COXE and WARD, Circuit Judges.

GUIDO BRINA, *Plaintiff in Error*,
vs.
THE UNITED STATES, *Defendant in Error*.

This cause comes here on writ of error from a judgment of the Circuit Court, Southern District of New York, imposing a fine of $100, entered on a verdict of a jury finding defendant guilty of a violation of the Food and Drugs Act of June 30, 1906. The offense charged was the shipment from New York City to Newark, New Jersey, of cotton seed oil contained in cans labeled (the Italian words in large type and the English words in small type) as follows:

"Olio per Insalata, Sopraffino Vival
Brand, Cotton Salad Oil extra quality."

It was charged that the oil was misbranded in that the label failed to disclose to Italian purchasers ignorant of the English language that the oil was a cotton seed oil, and that it was calculated to mislead the purchaser and induce him to believe the cans contained olive oil.

LACOMBE, *C. J.*

The section declared on (sec. 2) imposes a penalty on "any person who shall ship or deliver for shipment from any state . . . to any other state . . . any article of food or drugs so . . . misbranded." It was proved that the words "Olio per Insalata" mean "oil for salad" or "salad oil" and the trial judge held—and so charged the jury—that "as a notorious fact salad oil prima facie means olive

oil" but allowed the defendant to show if he could that "it means something else because of recent events which have perhaps rendered olive oil more difficult to obtain or that other food elements have come to be known as salad oil." No such proof was introduced and the ruling is assigned as error. The Century Dictionary, Worcester's, Stormont's, Imperial, and the Encyclopedia all define "salad-oil" as "olive oil;" Webster's does not give any definition. We are satisfied that the trial judge quite properly charged, in the absence of any testimony of the sort suggested, that "salad oil prima facie imports olive oil; that is what the world has been accustomed to regard as salad oil."

The evidence showed that the articles complained of were sold and shipped by the "Standard Trading Co." of which defendant was an employee,—its "manager." He negotiated the sale. It did not appear whether the concern was a corporation, or a firm, or an individual trading under this corporate name; nor whether the defendant had any interest in the concern other than as employee. It is contended that the circuit court should have directed a verdict of not guilty at the close of the case on the ground that there was not sufficient proof to sustain a finding that he personally shipped the goods or caused them to be shipped. The plaintiff in error is in no position to make such contention in this court. At the close of the government's case motion was made to dismiss the information upon several grounds, one of which was "that it has not been shown that the defendant Brina shipped these goods to any place out of the state." The motion was denied and exception reserved. Testimony was thereafter introduced by the defendant on the various issues in the case, part of it being directed to the matter of shipment. At the close of the case defendant renewed his motion to dismiss the information but only "on the ground that it has not been shown by any evidence that the can which was used in this case deceived any of the public." This motion was denied, the court stating that it was "the only question for the jury." No objection was taken on the ground that shipment was not proved. nor was there any request to go to the jury on that question. There is, therefore, no exception in the case which raises the point now relied upon.

The judgment is affirmed.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

I. S. No. 12234-a.
F. & D. No. 912.

Issued August 13, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 474, FOOD AND DRUGS ACT.

MISBRANDING OF TOMATO CATSUP.

On or about November 28, 1908, the Diamond Manufacturing Company, Kansas City, Mo., shipped from the State of Missouri to the State of Kansas a consignment of a food product labeled "Nantucket Brand Tomato Catsup." Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the Diamond Manufacturing Company, and the dealer from whom the samples were procured, opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Western District of Missouri, charging the above shipment and alleging that the product was misbranded within the meaning of the act, because the product contained, among other things, 9.56 per cent of glucose, which substance was not set forth on the label above quoted as being one of the ingredients contained therein, so that said label was false and misleading and tended to deceive the purchaser.

On May 3, 1910, the case coming on for hearing, defendant entered a plea of guilty to the above information and the court imposed a fine of $10 and costs of prosecution.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

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52100°—No. 474—10

S. No. 480.
F. & D. No. 1330.

Issued, August 13, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 475, FOOD AND DRUGS ACT.

ADULTERATION OF OYSTERS.

On or about March 15, 1910, H. C. Rowe & Co., New Haven, Conn., shipped from the State of Connecticut to the State of Missouri a barrel containing 20 gallons of shucked oysters. Examination of this product made in the Bureau of Chemistry, United States Department of Agriculture, showed it to be adulterated within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report thereon that the shipment was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Western District of Missouri.

In due course a libel was filed against the said 20 gallons of oysters in the District Court of the United States for said district, charging the above shipment and alleging that said oysters were contaminated and contained enormous numbers of bacteria of a type highly deleterious to health, and that they were therefore wholly unfit for food, and praying seizure, condemnation, and destruction of the product.

On May 10, 1910, the case coming on for hearing and there being no claimant of record, the court rendered its decree sustaining the allegations of the libel and directing the United States marshal for said district to destroy the above-mentioned oysters, which was forthwith done.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52100°—No. 475—10

F. & D. No. 1259.
I. S. Nos. 12705-b, 12706-b, and 12707-b.
Issued August 13, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 476, FOOD AND DRUGS ACT.

MISBRANDING OF JAM.

On or about October 15, 1909, the St. Louis Syrup and Preserving Company, St. Louis, Mo., shipped from the State of Missouri to the District of Columbia a consignment of three varieties of "Clymer's Brand Jam," to wit, quince, cherry, and strawberry. Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the products were misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the St. Louis Syrup and Preserving Company, and the dealer from whom the samples were purchased, opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information, containing three counts, was filed in the District Court of the United States for the Eastern District of Missouri charging the above shipment and alleging (count 1) that the quince jam therein contained was misbranded because the label thereon represented it to contain 30 per cent of granulated sugar and 8 per cent corn syrup, when, as a matter of fact, it contained 59.14 per cent corn syrup (glucose) and only 2.17 per cent sugar; alleging (count 2) that the cherry jam above referred to was misbranded because the label thereon represented it to contain 30 per cent granulated sugar and 8 per cent corn syrup, when, as a matter of fact, it contained 29.94 per cent corn syrup (glucose) and only 2.79 per cent sugar; and alleging (count 3) that the strawberry jam above referred to was misbranded because the label thereon represented it to contain 30 per cent granulated sugar and 8 per cent corn syrup, when, as a matter of fact, it contained approximately 39.27 per cent corn syrup (glucose) and only 1.39 per cent sugar; that all three varieties of jam above referred to contained phosphoric acid in addition

to the substances named on the labels thereof; and that in view of the foregoing the labels on the products were false and misleading and tended to deceive the purchaser.

On May 4, 1910, the defendant entered a plea of guilty to each count of the information and the court imposed a fine of $10 on each count.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

I. S. No. 21292-a.
F. & D. No. 780.

Issued August 13, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 477, FOOD AND DRUGS ACT.

ADULTERATION AND MISBRANDING OF STOCK FEED—STAFOLIFE.

On or about March 4, 1909, the Lawrence & Hamilton Feed Company, Limited, a corporation, New Orleans, La., shipped from the State of Louisiana to the State of Georgia a consignment of stock feed labeled "Stafolife." Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the product was adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the Lawrence & Hamilton Feed Company, and the dealer from whom the samples were purchased, opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Eastern District of Louisiana against the said Lawrence & Hamilton Feed Company, Limited, charging the above shipment and alleging that the product was adulterated within the meaning of the act, in that rice hulls and alfalfa had been mixed and packed with the product in such a manner as to reduce, lower, and injuriously affect its quality and strength, and in that said alfalfa had been substituted in part for the ingredients of which the label represented the product to consist; and further charging that the product was misbranded, in that the label thereon represented the sole constituents of the product to be rice bran, corn, cotton-seed meal, and molasses, when, in truth and in fact, said label did not state all of the ingredients and constituents correctly, said article containing in addition rice hulls and alfalfa.

On May 27, 1910, the defendant entered a plea of guilty to the information and the court imposed a fine of $10 and costs.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52100°—No. 477—10

F. & D. No. 428.
I. S. No. 1435.

Issued August 13, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 478, FOOD AND DRUGS ACT.

ADULTERATION AND MISBRANDING OF VANILLA EXTRACT.

On or about August 3, 1907, the Ennis-Hanly-Blackburn Coffee Co., a corporation, Kansas City, Mo., shipped from the State of Missouri to the State of Kansas a consignment of a food product labeled "Golden Rod Brand Flavoring Extract Vanilla." Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the product was adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the Ennis-Hanly-Blackburn Coffee Co., and the dealer from whom the samples were purchased, opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course an indictment was brought against the said Ennis-Hanly-Blackburn Coffee Co. by the grand jurors of the United States in and for the District Court of the United States for the Western District of Missouri, charging the above shipment and alleging that the product was adulterated within the meaning of the act, in that it consisted of a solution of vanillin and coumarin, colored in a manner to conceal the inferiority of said article, and further alleging the product to be misbranded, in that the label thereon was false and misleading and calculated and intended to deceive and mislead the purchaser, as the product in question did not contain any appreciable extract of the vanilla bean but was merely an imitation of vanilla flavoring extract.

On May 28, 1909, the defendant entered a plea of guilty to the indictment and the court imposed a fine of $25 and costs of prosecution.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52789°—No. 478—10

F. & D. No. 72–c. Issued August 13, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 479, FOOD AND DRUGS ACT.

ADULTERATION OF CREAM.

On or about September 27, 1909, Charles H. Dixon, of Jefferson, Md., sold and delivered at the Union Station, Washington, D. C., a quantity of cream. Dr. William C. Woodward, health officer of the District of Columbia, acting by authority of the Secretary of Agriculture, caused a sample from the above delivery to be procured and analyzed. As the findings of the analyst and report made indicated that the cream was adulterated within the meaning of the Food and Drugs Act of June 30, 1906, the said Charles H. Dixon was afforded an opportunity for hearing, and as it appeared after hearing held that this sale was in violation of the said act, the said health officer reported the facts to the United States attorney for the District of Columbia.

In due course a criminal information was filed in the Police Court of the District of Columbia charging the above sale and that the said cream was adulterated, in that a valuable constituent, to wit, butter fat, had been partly or wholly abstracted therefrom.

On May 31, 1910, the defendant pleaded guilty to the information and the court imposed a fine of $10.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52789°—No. 479—10

F. & D. Nos. 790 and 840.
I. S. Nos. 12211-a and 12239-a.

Issued August 13, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 480, FOOD AND DRUGS ACT.

ADULTERATION AND MISBRANDING OF LEMON EXTRACT.

On or about August 19 and October 15, 1908, Clark W. Earll, doing business as Earll Coffee Company, Kansas City, Mo., shipped from the State of Missouri to the State of Kansas two consignments of a food product labeled "Earll's Terpeneless Lemon Flavoring, Vegetable Coloring." Samples from these shipments were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the product was adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agrictulture afforded said Clark W. Earll, and the dealers from whom the samples were purchased, opportunities for hearings. As it appeared after hearings held that said shipments were made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Western District of Missouri against said Clark W. Earll, charging the above two shipments, and alleging that the product was adulterated within the meaning of the act, in that a liquid substance purporting to be terpeneless lemon flavoring with vegetable coloring had been mixed and packed with other substances so as to reduce and lower and injuriously affect the quality and strength of the product, which said liquid substance had been artificially colored and stained in a manner whereby damage and inferiority were concealed, and contained an added poisonous and deleterious ingredient, to wit, methyl (wood) alcohol, which rendered such article injurious to health; and further alleging the product to be misbranded within the meaning of the act, in that its label, above set forth, represented it to be a "Terpeneless Lemon Flavoring, Vegetable Coloring," when, in truth and in fact, it was merely an imitation thereof, artificially colored, and offered for sale under the distinctive name of another article, to wit, "Terpeneless Lemon Flavoring, Vegetable Coloring," the bottles containing said product being labeled and marked so as to deceive and mislead the purchaser.

On May 5, 1910, the case coming on for hearing, defendant entered a plea of guilty to the above information and the court imposed a fine of $10 and costs of prosecution in the case of each of the above shipments.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

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F. & D. No. 112.
I. S. No. 10299.

Issued August 13, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 481, FOOD AND DRUGS ACT.

ADULTERATION AND MISBRANDING OF BUCKWHEAT FLOUR.

On or about October 15, 1907, S. V. Smith, doing business as the Westport Cereal Mills, Kansas City, Mo., shipped from the State of Missouri to the State of Kansas a consignment of a food product labeled "Westport Cereal Mills Elk Brand Self-Rising Buckwheat Flour." Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report made indicated that the product was adulterated and misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the said S. V. Smith, and the dealer from whom the samples were purchased, opportunities for hearings. As it appeared after hearings held that the shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, together with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Western District of Missouri against the said S. V. Smith, charging the above shipment and alleging that the product had been adulterated, in that a substance (wheat or rye flour) had been substituted in part for the buckwheat flour of which the product was represented to consist, and further charging the product to be misbranded, in that its label represented it to be buckwheat flour, when, in truth and in fact, it was a mixture of buckwheat, rye, and wheat flours.

Upon arraignment the defendant entered a plea of not guilty, which he subsequently withdrew and substituted therefor a plea of guilty, whereupon the court imposed a fine of $25 and costs of prosecution.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52789°—No. 481—10

I. S. No. 1418–b.
F. & D. No. 1355.

Issued August 13, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 482, FOOD AND DRUGS ACT.

ADULTERATION OF EGGS.

On December 29, 1909, the Buffalo Cold Storage Co., a corporation, Buffalo, N. Y., shipped from the State of New York to the State of Pennsylvania a consignment of eggs. Samples from this shipment were procured and examined by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the product was adulterated within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the Buffalo Cold Storage Co., and the dealer from whom the samples were purchased, opportunities for hearings. As it appeared after hearings held that the said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course an indictment was brought in the District Court of the United States for the Western District of New York against said Buffalo Cold Storage Company, charging the above shipment, and alleging that the product was adulterated within the meaning of the act in that said eggs consisted in part of a filthy, decomposed, and putrid animal substance and were unfit for food.

On March 16, 1910, the defendant filed a demurrer, alleging the indictment to be insufficient on the ground that the act was unconstitutional.

On May 2, 1910, the court overruled the demurrer by an order in substance and form as follows:

DISTRICT COURT OF THE UNITED STATES. WESTERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA, *Plaintiff*,
against
BUFFALO COLD STORAGE COMPANY, *Defendant*.

ON DEMURRER TO INDICTMENT.

JOHN LORD O'BRIAN, United States Attorney.
KELLOGG & BAKER, for defendant.

HAZEL, *J*.

The demurrer of the defendant, Buffalo Cold Storage Company, to the indictment is predicated upon the claim that the statute entitled: "An Act for

preventing the manufacture, sale, or transportation of adulterated, misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes", was intended solely to apply to a manufacturer or dealer and as it is not charged in the indictment that said defendant was either a manufacturer, owner or dealer in the commodity, the indictment is fatally defective and must be dismissed. With this contention I do not agree. The statute forbidding the act provides that: "Any person who shall ship or deliver for shipment from any State or territory, etc., to any other State or territory any such article so adulterated or misbranded shall be guilty of a misdemeanor." Concededly the shipment and delivery of the commodity for transportation from Buffalo to Pittsburgh in adulterated or impure condition is within the letter of the statute. It is unquestionably true that the inhibition of an act may be so plainly expressed by a statute that he who runs and thinks may comprehend its complete import and still not be within the contemplation of the law makers, but the provision under consideration does not fall within this class. Congress by its enactment intended to promote honesty and fair dealing in trade and secure to the public pure and wholesome food and drugs and manifestly there must be a reasonable construction of the act to carry out the intention of Congress in this regard. There is nothing in the act which will result in any absurdity or lead to injustice or oppression as was the case in Church of the Holy Trinity *vs.* United States (143 U. S., 457), and other cases of similar description cited in defendant's brief.

I have carefully read the excerpts of the debates in Congress on the subject prior to the passage of the act and I think from what was said by Senators Heyburn and Money that the prohibition was expressly couched in broad language to include those who ship or deliver for transportation commodities of the character forbidden by the statute. It is quite true that warehousemen who deliver such commodities for transportation may not have knowledge of the deleterious character of the food and may be wholly innocent of criminal intent but this is a question which may be safely left to the trial jury. The indictment charges the offense in the language of the statute and particularizes the nature of the offense in such a way as to apprise the defendant as to what he will be required to meet on the trial and under the authorities this is sufficient. (Ledbetter *vs.* United States, 170 U. S., 606; Armour Packing Co. *vs.* United States, 209 U. S. 56; Bruton *vs.* United States, 202 U. S. 344.)

The demurrer is overruled.

Trial of the issues was had on May 12 and 13, 1910, resulting in a verdict of guilty, upon which the court imposed a fine of $200.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

F. & D. No. 1380.
I. S. No. 511.

Issued August 13, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 483, FOOD AND DRUGS ACT.

MISBRANDING OF BITTERS.

On or about April 4, 1910, the Imperial Distilling & Cordial Co., Chicago, Ill., shipped from the State of Illinois to the State of Minnesota 25 boxes of bitters, each of which boxes was labeled "12 Bottles Bitters," and each of which bottles was labeled—

> "Italy Fernet-Branca Dei Fratelli Branca E. Comp. Milano via Broletto N 35 Vecino Alla Chiesa di S. Tomaso Fernet-Branca Flli Branca Milan L. Gandolfi & Co., New York, Sole Importers for the U. S., Mexc., Canada, Cuba and Porto Rico."

Analysis of sample of this product, made by the Bureau of Chemistry, United States Department of Agriculture, showed it to be misbranded within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the shipment was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the district of Minnesota.

In due course a libel was filed in the District Court of the United States for said district against the said 25 boxes of bitters, charging the above shipment and alleging that the product was misbranded, in that the said bottles were falsely labeled and misbranded so as to deceive and mislead the purchaser, as by said labels it is purported that the contents of each of said bottles of bitters is a foreign product, imported from Italy, when, as a matter of fact, said bottles of bitters and the contents thereof had not been made or manufactured in Italy, but in Chicago, Ill., U. S. A.; and praying seizure, condemnation, and forfeiture of the product.

On May 10, 1910, the case came on for hearing, and no claimant for the product having entered an appearance, the court, being fully informed in the premises, issued its decree sustaining the allegations of the libel above set forth, condemning and forfeiting the product to the use of the United States, and ordering its destruction by the marshal of the district aforesaid.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52789°—No. 483—10

F. & D. No. 74–c. Issued August 13, 1910

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 484, FOOD AND DRUGS ACT.

ADULTERATION OF CREAM.

On or about April 29, 1910, Charles M. Parks, Round Hill, Va., sold and delivered at the Union Station, Washington, D. C., a quantity of cream. Dr. William C. Woodward, health officer of the District of Columbia, acting by authority of the Secretary of Agriculture, caused a sample from the above delivery to be procured and analyzed. As the findings of the analyst and report made indicated that the cream was adulterated within the meaning of the Food and Drugs Act of June 30, 1906, the said Charles M. Parks was afforded an opportunity for hearing, and as it appeared after said hearing held that the sale was in violation of the act, the said health officer reported the facts to the United States attorney for the District of Columbia.

In due course a criminal information against the said Charles M. Parks was filed in the Police Court of the District of Columbia, charging that the said cream was adulterated in that a valuable constituent of the article, to wit, butter fat, had been abstracted and left out wholly or in part.

On June 4, 1910, the defendant entered a plea of guilty to the information and the court imposed a fine of $10.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

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52789°—No. 484—10

F. & D. No. 75–c. Issued August 13, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 485, FOOD AND DRUGS ACT.

ADULTERATION OF CREAM.

On or about April 30, 1910, William L. Thompson, of Manassas, Va., sold and delivered at the Union Station, Washington, D. C., a quantity of cream. Dr. William C. Woodward, health officer of the District of Columbia, acting by authority of the Secretary of Agriculture, caused a sample from the above delivery to be procured and analyzed. As the findings of the analyst and report made indicated that the cream was adulterated within the meaning of the Food and Drugs Act of June 30, 1906, the said William L. Thompson was afforded an opportunity for hearing, and as it appeared after hearing held that the sale was in violation of the said act, the said health officer reported the facts to the United States attorney for the District of Columbia.

In due course a criminal information against the said William L. Thompson was filed in the Police Court of the District of Columbia, charging that the said cream was adulterated, in that a valuable constituent, to wit, butter fat, had been wholly or in part abstracted.

On June 2, 1910, the defendant entered a plea of guilty to the information and the court imposed a fine of $10.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 25, 1910.*

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52789°—No. 485—10

S. No. 377.
F. & D. No. 1049.

Issued August 13, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 486, FOOD AND DRUGS ACT.

ADULTERATION OF FROZEN EGGS.

On or about November 15, 1909, R. Smithson, Chicago, Ill., shipped from the State of Illinois to the State of Massachusetts 50 cans of frozen eggs. Analysis of samples of this product made in the Bureau of Chemistry, United States Department of Agriculture, showed it to be adulterated within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the product was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the District of Massachusetts.

In due course a libel was filed in the District Court of the United States for said district against the said 50 cans of eggs, charging the above shipment and alleging the product to be adulterated within the meaning of the act, in that it consisted in part of filthy, decomposed, and putrid animal and vegetable substance, and praying seizure, condemnation, and forfeiture of the product.

The case coming up for hearing and there being no claimant of record, the court entered a default decree, condemning and forfeiting the product to the United States, and ordering its destruction by the marshal of said district, which order was forthwith executed.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52789°—No. 486—10

S. Nos. 445 and 447.
F. & D. Nos. 1248 and 1250.

Issued August 13, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 487, FOOD AND DRUGS ACT.

MISBRANDING OF MACARONI.

On or about February 11, 1910, the Atlantic Macaroni Company, Long Island City, N. Y., shipped from the State of New York to the State of Massachusetts 480 cases of macaroni, of which 115 were labeled "Macaroni Gragno Style, Luigi Mosca Brand," 115 were labeled "Angelo Stella Brand," and the remaning 250 cases were labeled "High Grade Macaroni G. DeMartini Brand." Analysis of samples of these products made in the Bureau of Chemistry, United States Department of Agriculture, showed them to be misbranded within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the products were liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the District of Massachusetts.

In due course a libel was filed in the District Court of the United States for said district, charging the above shipment, and alleging the products to be misbranded within the meaning of the act, in that the 230 cases first mentioned were labeled in words in a foreign language, to wit, "Orzo," "Macaroncelli," "Qualita Extrafina," and "Spaghetti," and the remaining 250 cases were labeled in words in a foreign language, to wit, "Tagliatelline," "Perciatelli," "Mezzani," "Macaroncelli," and "Spaghettini," which would deceive and mislead a purchaser and lead him to believe that the article purported to be a foreign product, when in truth and in fact it was manufactured in the United States, and praying seizure, condemnation, and forfeiture of the product. Whereupon the Atlantic Macaroni Company filed a claim to the ownership of the product and petitioned that, in view of its having paid the costs of the proceedings and executed and delivered a good and sufficient bond, conditioned that said 480 boxes

of macaroni should not be sold or disposed of contrary to law, the product be delivered to said claimant. The case coming on for hearing, the court entered its decree granting the petition of claimant and ordering the delivery of said cases to it, which order was forthwith executed.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

S. No. 181.
F. & D. No. 478.

Issued August 30, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 488, FOOD AND DRUGS ACT.

MISBRANDING OF CANNED BLUEBERRIES.

(UNDER WEIGHT.)

On or about August 20 and September 10, 1908, Jasper Wyman & Son, Millbridge, Me., shipped from the State of Maine to the State of Massachusetts two consignments of canned blueberries, aggregating 150 cases, each of which cases were labeled "2 Doz. 2-lb. Cans. Wyman's Fancy Blueberries. Jasper Wyman & Son, Millbridge, Me." Examination of samples of this product made in the Bureau of Chemistry, United States Department of Agriculture, showed it to be misbranded within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the product was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the District of Massachusetts.

In due course a libel was filed in the District Court of the United States for said district against said 150 cases, charging the above shipment and alleging the product to be misbranded within the meaning of the act, in that the contents of said packages were stated thereon in terms of weight but were not correctly stated on the outside of said packages. The label above quoted represented each can to contain 2 pounds, when as a matter of fact the contents of each can weighed about 1 pound and 8 ounces, and praying seizure, condemnation, and forfeiture of the product. Whereupon said Jasper Wyman & Son filed a claim to the product, admitting the allegations to the libel, and agreed that a decree of forfeiture for such branding should be entered by the court, but praying that the merchandise in question be delivered to them upon the giving of a bond to be approved by the court, conditioned that in the event of the delivery of

such goods to them, they should not be sold or otherwise disposed of contrary to law.

The case coming on for hearing, the court entered a decree sustaining the allegations of the libel and ordering that upon payment of the cost of libel proceedings and upon the execution and delivery of a bond of $300, conditioned that said 150 cases should not be sold or otherwise be disposed of contrary to law, said cases be delivered to the claimant. The costs having been paid and bond filed by the claimant in accordance with said decree, the 150 cases were delivered to them.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

S. No. 185.
F. & D. No. 501.
Issued August 30, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 489, FOOD AND DRUGS ACT.

ADULTERATION OF OLIVE OIL.

On or about March 10, 1909, there were located on the wharves of the Merchants and Miners Transportation Company, Boston, Mass., 2 barrels of oil labeled, respectively, "N 10" and "N 11," ordered and invoiced as olive oil, which had been shipped from the State of Pennsylvania to the State of Massachusetts. The analysis of samples of this product made in the Bureau of Chemistry, United States Department of Agriculture, showed it to be adulterated within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the product was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the District of Massachusetts.

In due course a libel was filed in the District Court of the United States for said district against said 2 barrels of olive oil, charging the above shipment and alleging the product to be adulterated within the meaning of the act, in that it was offered for sale under the name of pure olive oil, whereas in truth and in fact cotton-seed oil had been mixed in said barrels with olive oil, in the proportion of about seven parts of cotton-seed oil and three parts of olive oil, and praying seizure, condemnation, and forfeiture of the product. Whereupon Ettore M. Garrasi, of Philadelphia, Pa., filed a claim as owner of said 2 barrels of oil, admitting said product to be adulterated but not so as to be deleterious to health, and praying that the product be delivered to him upon the filing of a bond to be approved by the court, conditioned that he should not sell or otherwise dispose of said product contrary to law.

The case coming on for hearing, the court entered its decree, finding the said 2 barrels of oil to be adulterated, but not so as to be deleterious to health, and ordering that upon the payment of the costs of libel proceedings and upon the execution and delivery of a bond in the sum of $150, conditioned that said 2 barrels should not be sold or otherwise disposed of contrary to law, said 2 barrels be delivered to the claimant. The claimant having paid the cost of proceeding and having executed and delivered a satisfactory bond in conformity with the terms of said decree, the 2 barrels of oil were delivered to him.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, *D. C., June 25, 1910.*

S. No. 458.
F. & D. No. 1267.

Issued August 30, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 490, FOOD AND DRUGS ACT.

MISBRANDING OF SARDINES.

On or about February 7, 1910, there were shipped from the State of Maine to the State of Massachusetts 150 cases of canned sardines labeled "Victor Renee Brand, American Sardines in Oil, Selected Quality, Packed for Northern Maine Packing Company, Corinna, Maine. Guarantee Legend Serial No. 9049. These Sardines are Extra Selected Fish, fried by French Process in Finest Quality Salad Oil." Examination of samples of this product made in the Bureau of Chemistry, United States Department of Agriculture, showed it to be misbranded within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the product was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the District of Massachusetts.

In due course a libel was filed in the District Court of the United States for said district against said 150 cases of canned sardines, charging misbranding within the meaning of the act, in that they were labeled in a manner to deceive and mislead the purchaser, the statement "These sardines are extra selected fish, fried by French process in the finest quality salad oil" being false, because said fish were not packed in salad oil but in cottonseed oil, and praying seizure, condemnation, and forfeiture of the product. Whereupon Rosenstein Brothers, a corporation, filed a claim to the ownership of said 150 cases and petitioned that the product be delivered to claimant, in view of the fact that it had paid the costs of the proceedings and executed and delivered a good and sufficient bond conditioned that the product should not be sold or disposed of contrary to law.

The case coming on to be heard, the court entered its decree granting the petition above set forth and ordering the delivery of the 150 cases of sardines to the claimant, which order was forthwith executed.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

S. No. 398.
F. & D. No. 1153.

Issued August 30, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 491, FOOD AND DRUGS ACT.

MISBRANDING OF MACARONI.

On or about December 13, 1909, F. Romeo & Company, Brooklyn, N. Y., shipped from the State of New York to the State of Massachusetts 450 cases of macaroni, each of which bore on one end the words "Il Gladiator Fabbrica Di Paste sopraffine uso Gragnano", and on the opposite end "Il Gladiatore Brand Naples Styles Macaroni," and upon the sides the words "Zitti," "Preceatelli," "Mezzani", "Ditali," and "Rigatoni." Examination of this product made in the Bureau of Chemistry, United States Department of Agriculture, showed it to be misbranded within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the examination of the analyst and report made that the product was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the District of Massachusetts.

In due course a libel was filed in the District Court of said district against said 450 cases of macaroni, charging the above shipment and alleging the product to be misbranded within the meaning of the act, in that it was labeled in the words in a foreign language above set forth, so as to deceive and mislead the purchaser and lead him to believe that the food was a foreign product, when in truth and in fact it was manufactured in the United States of America, and praying seizure, condemnation, and forfeiture of the product. Whereupon Francesco Romeo filed a claim to the ownership of said 450 cases of macaroni and petitioned the court that, in view of his having paid the costs of the proceedings and executed and delivered a good and sufficient bond conditioned that the product should not be sold

and disposed of in violation of law, the 450 cases in question be delivered to him.

The case coming on for hearing, the court entered a decree granting the petition of claimant and ordering that the said cases be delivered to him, which order was forthwith executed.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

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S. No. 470.
F. & D. No. 1304.

Issued August 30, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 492, FOOD AND DRUGS ACT.

ADULTERATION OF FROZEN EGG MATTER.

On or about March 3, 1910, the Max Malter Company, a corporation, Chicago, Ill., shipped from the State of Illinois to the State of Massachusetts 574 cans of frozen egg material. Examination of samples of this product made in the Bureau of Chemistry, United States Department of Agriculture, showed it to be adulterated within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the product was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the District of Massachusetts.

In due course a libel was filed in the District Court of the United States for said district against said 574 cans, charging the above shipment and alleging the product to be adulterated within the meaning of the act, in that it consisted in part of filthy, decomposed, and putrid animal and vegetable substance, and praying seizure, condemnation, and forfeiture.

The case coming on for hearing, and there being no claimant of record, the court entered a default decree, forfeiting the product to the United States.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52796°—No. 492—10

S. No. 523.
F. & D. No. 1397. Issued August 30, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 493, FOOD AND DRUGS ACT.

MISBRANDING OF SPAGHETTI.

On or about April 14, 1910, there were transported from the State of California to the State of Washington 275 cases of spaghetti, bearing the following label: "Perfezionata Fabrica a Vapore Paste Alimentare Uso Napoli Vexuvio Qualitia Superior Colorita L. Nunziato E. Figli, San Francisco." Examination of samples of this product made in the Bureau of Chemistry, United States Department of Agriculture, showed it to be misbranded within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the product was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the Western District of Washington.

In due course a libel was filed in the District Court of the United States for said district against said 275 cases of spaghetti, charging the above shipment and alleging the product to be misbranded within the meaning of the act, in that the words of the label above set forth, and a representation thereon of Mount Vesuvius in eruption, gave the false and misleading impression that said food product was of foreign manufacture, when as a matter of fact said product was not of foreign manufacture.

On April 25, 1910, L. Nunziato & Son entered their appearance as owners of the product and confessed the allegations in the libel, whereupon the court entered a decree finding the product to be misbranded as alleged in the libel and condemning and forfeiting said product, with the proviso that the goods be released to the above-

mentioned claimants upon the payment of all costs of the libel proceedings and the filing of a bond conditioned that the product be not sold in violation of law. Said costs having been paid and a bond in the sum of $250 filed and approved, the product was released to the claimants.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

S. No. 380.
F. & D. No. 1071. Issued August 30, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 494, FOOD AND DRUGS ACT.

ADULTERATION OF FROZEN EGGS.

On or about November 29, 1909, the Henry Sloan Company, Buffalo, N. Y., shipped from the State of New York to the State of Massachusetts 19 cans of frozen eggs. Analysis of a sample of this product made in the Bureau of Chemistry, United States Department of Agriculture, showed it to be adulterated within the meaning of the Food and Drugs Act of June 30, 1906. As it appeared from the findings of the analyst and report made that the product was liable to seizure under section 10 of the act, the Secretary of Agriculture reported the facts to the United States attorney for the District of Massachusetts.

In due course a libel was filed in the District Court of the United States for said district against the said 19 cans of frozen eggs, charging the above shipment and alleging the product to be adulterated within the meaning of the act, in that said product consisted in part of filthy, decomposed, and putrid animal and vegetable substance, and praying seizure, condemnation, and forfeiture of the product.

The case coming on for hearing and no claimant of the product having appeared, the court entered a default decree, condemning and forfeiting the product to the United States, and ordering its destruction by the marshal of the district, which order was forthwith executed.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

I. S. No. 17640-a.
F. & D. No. 1085. Issued August 30, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 495, FOOD AND DRUGS ACT.

MISBRANDING OF DRUG PRODUCT—"FLAG SALT."

On or about January 25, 1909, the Flag Salt Remedy Co., a corporation, Savannah, N. Y., shipped from the State of New York to the State of Michigan a consignment of a drug product labeled "Flag Salt." Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the Flag Salt Remedy Co. and the dealer from whom the samples were purchased opportunities for hearings. As it appeared after hearings held that the said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the Western District of New York against the said Flag Salt Remedy Co., charging the above shipment and alleging that the product was misbranded within the meaning of the act, in that the label on the boxes containing the product and the circulars packed in said boxes asserted, among other things, that the product positively cures all forms of headache and neuralgia and that it does away with the use of morphine, opium, chloral, antipyrine, cocaine, and other injurious drugs, that it contains an "energizing agent," and that acetanilid, the chief ingredient of the product in question, is not an injurious drug, all of which statements were false and misleading and tended to deceive the purchaser.

On May 10, 1910, the defendant entered a plea of guilty and the court suspended sentence.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52796°—No. 495—10

I. S. No. 45.
F. & D. No. 1144. Issued August 30, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 496, FOOD AND DRUGS ACT.

MISBRANDING OF PLASTER PAD.

On or about October 16, 1908, F. J. Stuart, doing business as Stuart Plaster-Pad Company, St. Louis, Mo., shipped from the State of Missouri to the District of Columbia a consignment of an article consisting of an adhesive pad with a cone containing a drug compound thereto attached, sold under the name of "Stuart's Adhesive Plaster-Pad." A sample from this shipment was procured and examined by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report thereon indicated that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the said F. J. Stuart and the dealer from whom the sample was purchased opportunities for hearings. As it appeared after hearings held that said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

On May 5, 1910, an information was filed in the District Court of the United States for the Eastern District of Missouri, charging the above shipment and alleging that said plaster pad and the compound drug contained in the cone thereon were misbranded within the meaning of the act in that the label on the pad in question stated that said compound drug possessed qualities which would cure or tend to cure the disease of hernia or rupture, when as a matter of fact said compound drug did not possess such qualities, the statements on said label being thus false and misleading; and in that a circular inclosed

with said plaster pad bore statements to the effect that the pad in question was capable of effecting a cure of hernia through the agency of the medicines it contained and which was furnished with the device, and that the application of the device would effect a cure of hernia by closing the hernial opening through action upon the muscles and tissues beneath the skin, said statements being false and misleading.

On April 18, 1910, the defendant filed a demurrer to the above information in form and substance as follows:

IN THE DISTRICT COURT OF THE UNITED STATES, EASTERN DIVISION, EASTERN DISTRICT OF MISSOURI.

THE UNITED STATES OF AMERICA
vs.
F. J. STUART. } No. 5463.

The defendant demurs to the information and says that the same is insufficient in law and that he should not be required to answer the same, in this:

That the said information alleges the shipment for sale in interstate commerce, of "*a package containing a so-called PLASTER-PAD, to which was attached a cone-shaped receptacle containing a compound drug, and which said PLASTER-PAD was labeled*" in a certain manner alleged in said information,

Whereas the Act of Congress of June 30, 1906, under which said information is drawn has no application to a *plaster-pad*, or other article of like nature and there can be no such act committed as "*misbranding*" a *plaster-pad;*

That the said information alleged, "*that upon a circular INCLOSED with said PLASTER-PAD and thereby made part of the label descriptive of said pad and of the drug contained therein*, occurred the following statement, to-wit: '*The plaster pads will hold ordinary rupture under ordinary circumstances,—however they contain the curing medicines and their primary and most important object is to effect a complete cure.* They are made to cure rupture but they will also hold ordinary and some of the worst cases. Remember that a hernia (rupture), *is not* a break or tear in tissues, but a stretching apart or weakening of the muscles which surround a natural opening. Now, to effect a cure, these muscles must be contracted and strengthened. The plaster pads work on this principle; they draw the muscles, therefore if you feel a slight drawing sensation do not be alarmed, as it shows that the plaster-pads are doing what they were intended to do'".

Whereas a circular *INCLOSED with a plaster-pad* cannot be a label, or brand *upon* such article. The information is thus insensible and repugnant;

That said information does not contain an averment which tends in the slightest degree to constitute an offense against the laws of the United States, or against the "Act for preventing the manufacture, sale or transportation of adulterated, or misbranded, or poisonous or deleterious foods, drugs, medicines and liquors and for regulating traffic therein and for other purposes", approved June 30, 1906;

That the said information affirmatively shows that the *drug* contained in the *cone* upon the plaster-pad was not *misbranded* because there was no *label* upon the said *cone*, containing the drug, but the *label* was upon the *plaster-pad.*

That the term "*misbranded*", as applied to drugs is operative only where the "*package or label*" of such drug shall *BEAR* a "*statement, design, or device*

regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular," which involves in addition to the idea of the misstatement being *borne upon* the package containing the drug, the further idea of misrepresentation as to the nature rather than as to the quality, curative in any degree or otherwise, of the drug contained in the package, and that any other notion of the law would be subject to criminal information or indictment every manufacturer and shipper of drugs which were labeled as curative where the Secretary of Agriculture thought they were not possessed of such quality;

That the term "*Misbranded*" is defined by the Statute, as applicable to drugs and there is not the faintest suggestion in the definition that an untruthful, or mistaken assertion of curative properties, or qualities in drugs which appears in a label upon the package containing such drugs shall constitute misbranding within the meaning of the statute;

That to state, on a *circular*, that a bottle contained alcohol or opium would not satisfy the mandatory requirement of the Statute. The statement to come within the Statute must be on the label *borne* by the bottle, or package;

That the Section prohibiting substituting one drug for some other drug in a bottle labeled as containing such other drugs, cannot be violated where whatever there is indicative of the contents of the bottle appears only upon a circular accompanying such bottle;

That said information is in many other respects and in all respects insufficient, repugnant and insensible and wholly fails to state facts sufficient to constitute an offense.

Wherefore defendant prays judgment, etc.

CHESTER H. KRUM,
For Defendants.

On April 23, 1910, the court sustained the demurrer and dismissed the information.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

Decisions of United States district courts and of United States circuit courts of appeal adverse to the Government will not be accepted as final until acquiescence shall have been published.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

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Issued August 30, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 497, FOOD AND DRUGS ACT.

IN THE CIRCUIT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION.

SHAWNEE MILLING COMPANY, *Complainant*, *vs.* MARCELLUS L. TEMPLE, UNITED STATES District Attorney, and Frank B. Clark, United States Marshal, *Respondents.*	No. 2490. Equity.
THE UPDIKE MILLING COMPANY, A corporation, *Complainant*, *vs.* MARCELLUS L. TEMPLE, AS UNITED STATES District Attorney for the Southern District of Iowa, Frank B. Clark as United States Marshal for the Southern District of Iowa, and A. Brown, full first name unknown, as Food & Drug Inspector of the United States Department of Agriculture, *Respondents.*	No. 2492. Equity.

SUITS TO RESTRAIN SEIZURES, UNDER SECTION 10 OF THE ACT, OF COMPLAINANTS' FLOUR BLEACHED BY THE ALSOP PROCESS.

On or about December 14, 1909, the Shawnee Milling Co., a corporation, of Topeka, Kans., filed in the United States Circuit Court for the Southern District of Iowa a bill in equity naming as defendants thereto Marcellus L. Temple and Frank B. Clark, United States attorney and United States marshal, respectively, for said district, alleging that said defendants were about to proceed without warrant of law and to the detriment of complainant's rights to make seizures of flour bleached by the Alsop process, under section 10 of the Food

and Drugs Act, and further alleging that said act was unconstitutional, and praying that said defendants be enjoined from proceeding under said act and from making seizures of complainant's flour bleached as aforesaid pending the determination of this case.

Subsequent to the filing of the above bill the Updike Milling Co., a corporation, of Nebraska, filed in said court a similar bill against the same defendants and A. Brown, a food and drug inspector of the United States Department of Agriculture, containing substantially the same allegations and prayers. The material allegations of both bills of complaint appear more fully in the opinion of the court hereinafter set out.

To both bills of complaint the defendants filed a demurrer alleging as grounds therefor that complainants' bill failed to state any cause which would entitle them to the relief sought in said bills.

On April 26, 27, and 28, 1910, the cases came on for hearing and the questions of law raised by the bills of complaint and the demurrers thereto were fully argued to the court. On May 10, 1910, after full consideration, the court dismissed complainants' bills, delivering the following opinion:

OPINION.

SMITH MCPHERSON, Judge.

Each of these two cases is by a bill in equity, practically the same. One of complainants, Updike Milling Company, is a corporation under the laws of Nebraska, there engaged in the business of manufacturing wheat into flour both for domestic use, and for shipments into Iowa and other states for sale and consumption. The other complainant, Shawnee Milling Company, is a corporation under the laws of Kansas, there engaged in a like business, sales and shipments.

The defendants are the United States Attorney and Marshal for this District, and the relief sought is to enjoin the respondent officers from having issued, or serving process for seizing complainants' flour in interstate shipments under the National Pure Food statute of June 30, 1906.

The allegations are that complainants' flour is whitened and aged by a process, and that the same is not harmful, but is more nutritious, wholesome and attractive for making bread. It is not alleged in the bill of complaint in terms that the flour is bleached by the Alsop process as covered by certain English and American patents as set forth by the Circuit Court of Appeals for this circuit in the case of Naylor *vs.* Alsop Process Company (168 Fed. Rep., 911), but all the arguments, both by briefs and orally, were on that state of facts. Counsel for the United States have appeared for the defendants, thereby in effect making the cases controversies between the United States Government on the one side, and western flour mill owners on the other, who bleach their flour by the agency of nitrogen peroxide under the Alsop Patent process.

A literal reading of the bills of complaint will show that they are fairly subject to the criticism, that the allegations as to the aging, whitening and improving the flour are largely by the use of adjectives and adverbs, instead of reciting just what is done; how the flour is aged; how whitened; how made more nutritious; why not harmful; and why better by the use of some agency not named nor described. But this criticism need not be elaborated. The

cases are now for determination on demurrers to the bills of complaint, and sufficient allegations appear to cover the rulings now to be made.

A bill in equity in which the writ of injunction can issue to enjoin the enforcement of a criminal or penal statute is allowable only when:

1. Such statute is unconstitutional or otherwise invalid;

2. In the attempt to enforce such invalid statute, rights of property are invaded and trampled on; or,

3. The often repeated attempts to enforce such invalid statute creates a multiplicity of actions which are of themselves oppressive.

The important and recent case of Ex parte Young (209 U. S. 123), illustrates this, in which case it was held that a bill in equity would confer jurisdiction because of the oppressive penalties if an effort should be made to protect the rights of property. In City of Hutchinson *vs.* Beckham (118 Fed. Rep., 399), the Circuit Court of Appeals for this circuit held that an injunction should issue against the prosecution of cases under an invalid ordinance requiring an illegal license, which would be followed by many criminal prosecutions. In Dobbins *vs.* Los Angeles (195 U. S., 223, *241*), the holding was clearly and tersely stated:

"It is well settled that where property rights will be destroyed lawful interference by criminal proceedings under a void law or ordinance may be reached and controlled by a decree of a court of equity."

But if property rights are not invaded, then a court of equity ordinarily will not interfere, because the defense as to the invalidity of the statute can be urged in the criminal or penal action or special proceeding. Thus, in the case of In re Sawyer (124 U. S., 200), it was held that proceedings for the ouster of a city officer could not be enjoined for the alleged invalidity of the law under which the proceedings were being conducted. And of like holdings are the cases of Hardrader *vs.* Wadley (172 U. S., 148), and Fitts *vs.* McGhee (172 U. S., 516).

And if the proceedings for seizure are to be regarded as civil, then section 723, R. S., will prohibit the filing of a bill in equity to enjoin the enforcement of a valid statute.

In the one case now before the court, the bill of complaint recites that several seizures of flour were made in this judicial district, and after a number of efforts by the complainant to have the cases submitted to the court with or without a jury for a hearing on the merits, the Government dismissed the cases, after the flour thus seized had deteriorated in quality and value.

In the cases now before the court, as property rights are involved, bills in equity will be entertained, *provided* the statute under which the Government claims the rights to proceed is not a valid one. Herein is the question in the case. That is to say, Is the pure food statute of June 30, 1906, a valid enactment? Did Congress have the power to enact it? Is it within the commerce clause of the Constitution, or is it a mere police regulation erroneously garbed and cloaked as a regulation of commerce?

Good, sound wheat of the best variety, properly and timely harvested, put through the "sweat" in the stack, well ground and bolted, makes nutritious, wholesome, and white flour. This fact is so generally known that courts will take judicial notice of the fact.

It is said that flour made from new and poorer wheat, not "sweated," and made by the process covered by the English patent of Andrews, or the American patent of Alsop as illustrated in the patent decision hereinbefore referred to (168 Fed. Rep., 911), will also be equally white. This is quite likely true. But is it equally pure, equally nutritious, or is it adulterated and poisoned?

This court in these cases is not to decide those questions. Nitrogen peroxide under the Andrews patent is produced by combining nitric acid with a metallic compound. Under the Alsop patent it is produced by subjecting atmospheric air to a flaming electric arc. It is claimed by some that nitrogen peroxide is the agent for bleaching flour under both patents, while others claim that it is the ozone that does the effective work, while the nitrogen peroxide is a by-product when the ozone is thereby created.

Whatever the truth is as to what does the bleaching, it is both claimed, and denied, by chemists who ought to be able to agree, that the flour is poisoned by such process. But it is known that after the air is thus subjected to continuous flaming electrical discharges, that the result and gas is conveyed by means of pipes to a compartment and there is commingled with the flour agitated or in a cloud, and thus subjected to said treatment it becomes dry and white. The result of it all is that new wheat and of an inferior quality is converted into flour with the appearance of flour from a better wheat that has been aged by time.

The Government contends that flour thus bleached is flour in the language of the statute "whereby inferiority is concealed," and that "it contains added poisonous ingredient which may render such article (flour) injurious to health." The patentees and the millers deny this.

Here is a question for determination by a jury, or by the court if a jury is waived, and not to be determined in this case if the statute is valid.

Several of the states within the past few years have enacted pure food statutes. Congress June 30, 1906, enacted the statute in question. All these statutes were enacted to cure evils well nigh intolerable that had grown up during this age of greed and avarice and commercialism that has made money getting the prime object of life with so many. The evils were such that much of the foods we ate, whether meats of any kind, including fish, and poultry, or fruits in all forms, and breadstuffs, were so adulterated and "loaded" or "doctored" as to deceive the consumer. And the same was true of flavors and condiments. The evil as to confectionery and flavors and extracts was as great. Still greater was the evil as to drugs and medicines. In fact the evils were everywhere present, as to food and medicine, and other things. And to eliminate some of these evils and to enable the purchasers to receive what they ordered and paid for, many states passed statutes aimed at those frauds. But it was soon found that the states in some instances were disposed to condone as to some articles of local manufacture, and in many other instances the states were powerless to work out a remedy. Thereupon Congress, acting upon the theory that the evil was of national concern, enacted the statute in question. The debates in Congress show that the measure was earnestly fought as being one of paternalism, and a police regulation with which the states only could act.

The Secretary of Agriculture, Mr. Wilson, performed his duty both in letter and spirit when he submitted the question as to flour bleached by nitrogen peroxide to the Board of Food and Drug Inspection. And the board, the Secretary concurring, after a hearing given to all parties in interest, found that such flour is in contravention of the statute. Such finding is not binding as against the parties thus bleaching flour. But it is conclusive as against all criticism for making the seizures and bringing the question before the courts for determination.

Congress is given the power to provide for the general welfare of the United States. But without doubt if this legislation is sustained, it is because of that provision of the Constitution that provides that the Congress shall have

the power to regulate commerce among the several states. That provision is the life of the nation, and to adopt which was the great concern of the convention of 1787. Important as it is, it is ever before the courts. It gives great comfort to all who believe in one common country, and yet is antagonized oftener than any other provision of the Constitution, by those whose shield of defense is articles 9 and 10 of the amendments, as to the reserved power of the States.

No one claims that Congress can be the sole judge of its powers. All thoughtful persons concede that any court having jurisdiction in the first instance must pass upon the question of the powers of Congress, and that it is for the Supreme Court in the end to finally set the matters at rest. But so careful have our Congresses and Presidents been, that for the first hundred years of our Government, the Supreme Court found it necessary to hold that Congress had exceeded its powers in only twenty instances. (See Appendix to Volume 131, U. S. Reports, p. ccxxxv.) And of those twenty statutes thus held void, not one related to commerce. Since then, the Supreme Court has held three Congressional enactments void. One was a statute making a judgment of convicting conclusive evidence against a party in another case. (Kirby *vs.* U. S. Farmers Loan Co., 157 U. S., 429, and 158 U. S., 601.) The other, and only one from the organization of our Government to date as to commerce, is that of the employers liability statute, enacted under the claim that the commerce clause would sustain it. (The Employers Liability Cases, 207 U. S., 463.) If other enactments of Congress have been held void by the Supreme Court, such cases have been overlooked, and it is believed there are none other. There are almost innumerable decisions touching the power of the states with reference to commerce. It would be to no purpose to discuss many of these authorities. And it would be needless waste of energy to discuss the many decisions relating to the use of the mails, for the obvious reason that a distinct clause of the Constitution empowers Congress to control our postal system, and there is not the slightest difference whether the mails thus carried are state or interstate.

Neither the court nor the parties are aided by a review of those matters. It must be and is conceded that police regulations alone are for the State, and not for Congress to deal with.

But it does not follow that if the subject matter to be regulated is one of commerce, that it is for the state alone to deal with, because such subject matter is also one that pertains to the morals, health, or good order of the community.

Thus when the question arose as to the inspection of meats for food, legislatures claiming that they alone could determine when and to what extent police regulations should be carried, the Supreme Court decided that such inspection also impinged upon the rights of commerce and were therefore void. (Minnesota *vs.* Barber, 136 U. S., 313; Brimmer *vs.* Rebman, 138 U. S., 78.)

It will serve no purpose to discuss the principle upheld in Wilson *vs.* Blackbird Creek Company (2 Peters, 245), that the State can regulate certain interstate commerce of a local character, if Congress had not acted, nor of that other principle upheld by Congress that the State can legislate with reference to liability of a party when doing an interstate business when Congress has not acted. (Sherlock *vs.* Alling, 93 U. S., 99.) The complete answer to those suggestions is that in the matter now before the court, Congress has acted. The question now for consideration is not as to the power of the States relating to commerce, as held in Smith *vs.* Alabama (124 U. S., 463), upholding a state statute requiring a locomotive engineer even though operating an interstate train to submit to tests for color blindness.

The question here is as to the power of Congress over articles of interstate commerce, even though such articles in the end become subject to state statutes. No one doubts but that wheat and flour, as well as all articles of food, are subjects of commerce, and when carried over and across state lines, are subject to be regulated by Congress. And it is no answer to say, that when adulterated, or wrongly labeled, because in the end they will fall under a state statute, that they when being shipped can not be covered by a congressional enactment. The liquor cases illustrate this. Because of all the subjects of commerce there is no one thing more peculiarly and distinctly and appropriately subject to regulation by the State even to the extent of prohibition than are intoxicating liquors. And yet Congress legislates with reference to liquors. The Wilson Act of 1890 provided that when liquors arrived in a State they should be subject to state laws. This statute was upheld in the case In re Rahrer (140 U. S., 545), thereby modifying the practical effect of the holding in Leisy *vs.* Hardin (135 U. S., 100), that the State could not interfere by legislation as to liquors shipped interstate as long as the liquors were in the original packages. While in Rhodes *vs.* Iowa (170 U. S., 412), it was held that the liquors must be in fact and actually delivered to the purchaser before the state laws became effective as to such interstate shipment. No one should doubt but that legislation by Congress can control the interstate subject of commerce for a time at least, and then the State by a police regulation can control.

If liquors do not sufficiently illustrate the question, lottery tickets will. The Louisiana Lottery was conducted by men of high repute and much renown. But it became a national scandal. It was struck at by denying it the use of the mails. The legislature of the State gave it encouragement; even its life. But Congress provided in addition that it should be a crime to carry lottery tickets from one State to another by means other than through the mails. Can any person doubt but that the Louisiana Lottery was or could have been made subject to the laws of Louisiana? And yet this congressional enactment was upheld in the Lottery Case (188 U. S., 321). But little need be said of that case. It was argued by counsel of great eminence. It was argued upon two separate occasions. It received the fullest consideration by the Supreme Court. Apparently no other case that was ever before that court received more attention and fuller consideration. Counsel for complainants herein concede all these things. And the only answer that has been made, or that can be made to that case, is in the statement that the case was decided by a divided court, four justices dissenting. It may be, or it may not be, that that weakens the case as an authority. It is barely possible that later on, that court changing as to its personnel, the decision may be overruled. But such reasoning is a mere speculation. On the other hand the fact that the court was so divided emphasizes the fact that the court gave great consideration to the question. But be these things as they may, it is not for this court to usurp the prerogative by blindly declining to follow that decision. That decision stands, and as long as it stands, it is the law of the country, and this court not only must, but does cheerfully observe it in all its phases.

Much more could be said. Cases commencing with Gibbons *vs.* Ogden, and then to date, could be reviewed. The question could be illustrated in many ways. But all that would be to no purpose: it would be academic.

Congress has enacted a safety appliance law for the preservation of life and limb.

Congress has enacted the anti-trust statute to prevent immorality in contracts and business affairs.

Congress has enacted the live stock sanitation act to prevent cruelty to animals.

Congress has enacted the cattle contagious disease act to more effectively suppress and prevent the spread of contagious and infectious diseases of live stock.

Congress has enacted a statute to enable the Secretary of Agriculture to establish and maintain quarantine districts.

Congress has enacted the meat inspection act.

Congress has enacted the employers' liability act.

Congress has enacted the obscene literature act.

Congress has enacted the lottery statute above referred to.

Congress has enacted (but a year ago) statutes prohibiting the sending of liquors by interstate shipment with the privilege of the vendor to have the liquors delivered c. o. d., and to prohibit shipments of liquors except when the name and address of the consignee and the quantity and kind of liquor is plainly labeled on the package.

These statutes, police regulations in many respects, are alike in principle to the act of June 30, 1906, under consideration. Can it be possible they are all void?

This statute by its title, and by its every provision plainly shows that it is with reference to commerce, and that it is not with reference to local police regulations.

It is also contended that so much of Section 7 of the Statute as relates to food is void because no standard has been fixed.

That argument is made because drugs are fixed by a standard recognized by the United States Pharmacopœia or National Formulary, and as to confectionery a standard is fixed by declaring what confectionery *shall not* contain. Whereas as to foods no standard has been fixed. It is a fact most obvious that no standard could be fixed other than was done by Congress. The one provision as to food is, that it shall not be mixed so as to reduce or lower or injuriously affect its quality or strength. Another provision is that some substance shall not be substituted wholly or in part for the article. Another provision is that no valuable constituent of the article shall be abstracted. Another provision is that it shall not be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed. Another provision is that poisonous or other deleterious ingredients shall not be added. Still another provision is that filthy, decomposed, or putrid substances shall not be added. And so on more in detail than herein enumerated. These provisions present questions of fact as to every alleged contraband article. This objection is without merit.

This case was argued upon both sides with most signal ability, displaying much learning, and was argued at great length. The case has received from this court the fullest consideration, and the conclusions are that these bills in equity cannot be maintained, and therefore will be dismissed.

DES MOINES, IOWA, *May 10, 1910.*

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

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Issued August 30, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 498, FOOD AND DRUGS ACT.

In the case of the United States ex rel. Alsop Process Company, petitioner, vs. James Wilson, Secretary of Agriculture, a mandamus proceeding in the Supreme Court of the District of Columbia to restrain the Secretary of Agriculture from publishing and circulating Food Inspection Decision No. 100 of the United States Department of Agriculture relative to flour bleached by the Alsop Process, and to compel cancellation of said decision.

On or about January 23, 1909, the Alsop Process Company filed in the Supreme Court of the District of Columbia a petition for a writ of mandamus directed to the Secretary of Agriculture alleging in substance that relator is a corporation engaged in the business of manufacturing and selling machinery and apparatus used by millers for the bleaching of flour by so-called Alsop Process (giving a description of said process), and further, that the Secretary of Agriculture caused hearings to be held to determine whether flour bleached by the Alsop Process was adulterated within the provisions of the Food and Drugs Act of June 30, 1906, and after hearing the evidence for and against flour thus bleached, decided that, in his judgment, flour so bleached was adulterated within the meaning of the aforesaid act, and that the Secretary of Agriculture, without warrant or color of law, published and caused to be published the said decision designated as Food Inspection Decision No. 100, which publicly condemned as adulterated within the meaning of the Food and Drugs Act flour bleached by relator's process to the great damage of its business. The petition prayed that the Secretary of Agriculture be commanded to revoke and cancel and annul said decision and not to deliver or circulate additional copies thereof.

Upon the filing of the petition the court issued a rule directed to the Secretary of Agriculture as respondent requiring him to show cause by a certain date therein named why the prayer of said petition should not be granted.

Respondent duly answered said petition and to this answer the relator filed a demurrer. The case came on for hearing upon the questions raised by the above-mentioned pleadings and the court

overruled relator's demurrer. The following is the opinion of the court delivered by Mr. Justice Stafford:

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

UNITED STATES OF AMERICA EX REL. ALSOP PROCESS COMPANY, *Petitioner*,
vs.
JAMES WILSON, SECRETARY OF AGRICULTURE, *Respondent.*
} At Law. No. 51348.

OPINION OF THE COURT.

By STAFFORD, J.

This is a petition for a writ of mandamus. A rule to show cause was issued which the respondent has answered and to this answer the petitioner has demurred. The case was heard upon the demurrer and would have been disposed of at the time had it not been that the court understood that the parties desired that an opinion should be filed dealing fully with all the points involved. The case has been left undisposed of in the hope that opportunity would be found to prepare such an opinion, but the pressure of other duties having thus far prevented, and no likelihood appearing that the same can be done within the next few days, it is thought best to dispose of the case without answering categorically the numerous points made in the brief of the petitioner. After all what the case amounts to is this. The Secretary of Agriculture has made up his mind that bleached flour is obnoxious to the provisions of the pure food act and has made that opinion public, announcing at the same time that after six months, during which time the manufacturers and dealers will have an opportunity to adjust themselves to the situation, he will call upon the respective district attorneys to proceed against violators of the law. The petitioner claims to be the owner of a patent on the bleaching process and to be injured by the announcement of this opinion and intention. He is not the owner of any flour; he merely owns the patent and makes and sells the machinery. He says that the Secretary did not proceed according to the provisions of the pure food law in making up his mind; that he had no right to tell the public what opinion he had formed, nor what course he intended to pursue; that if he is going to recommend prosecutions at all he is bound to do so at once and not wait six months. He therefore asks this court, by the great writ of mandamus, to command the Secretary to vacate his decision, to take back what he has said, and hereafter to proceed strictly according to the law. The mere statement of the proposition seems to furnish its own answer and to render an elaborate opinion unnecessary. This court cannot change the fact that the Secretary entertains this opinion, nor the fact that he intends to call on the district attorneys to test the case in the courts. It cannot command him not to make his opinion and intention known and if it could it would be useless for he has already made it known, and the petitioner itself is making the fact still more widely known by this proceeding. The merits of the real question, namely, whether flour subjected to the bleaching process may be sold without violating the pure food law, is one that will ultimately be determined by the courts. In the meantime the Secretary is not violating any law in having an opinion and in telling the public what it is.

The demurrer is overruled.

WENDELL P. STAFFORD,
Justice.

The said Alsop Process Company stood upon its demurrer and prosecuted an appeal from the aforesaid judgment to the Court of Appeals for the District of Columbia. The case was then heard by said court on appeal and the judgment of the lower court was affirmed.

The following opinion by Mr. Justice Robb was rendered by the appellate court:

United States of America ex relatione Alsop Process Company, *Appellant*, *vs.* James Wilson, Secretary of Agriculture.	No. 2021.

This is an appeal from the Supreme Court of the District overruling the demurrer of the relator to an answer of the defendant, appellee here, to a rule to show cause why a mandamus should not be issued against him.

In its petition the relator states that it is a corporation of the State of Missouri engaged in the manufacture of flour bleaching machinery, which is sold throughout the United States and elsewhere and is extensively used by millers for bleaching flour. The process for which this machinery is designated is known as the "Alsop Process" and is covered by patent which is owned by the relator. The bleaching of flour by this process is accomplished by the passage of pure air through a flaming discharge of electricity and the application of the resultant gaseous medium to the freshly milled flour as the latter passes through an agitator. The flour thus treated, the relator states, has no substance mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength, is not deprived of any valuable substance, nor has it been mixed, colored, or treated in any manner whereby inferiority is concealed, and contains no deleterious ingredient or other element injurious to health. The relator further states that prior to November 18, 1908, the Secretary of Agriculture inserted, or caused to be inserted, in certain milling journals and other periodicals throughout the country a notice to the effect that a hearing would be held on the subject of bleached flour at the Department of Agriculture on November 18, 1908, at which time the relator says it was present by a duly authorized officer and by an attorney, and that the hearing was also attended by many millers from various parts of the country; that this hearing was continued five days, and testimony for and against said process was introduced; that the attorney for the relator conducted the case for the millers favoring the bleaching process; that the relator's manager gave extended testimony at this hearing; that the entire proceedings were transcribed by a stenographer and made accessible to the public generally. This hearing, the relator avers, was without color of authority of law. The petition further states that on the 10th of December, 1908, the said Secretary of Agriculture unlawfully, arbitrarily, and oppressively, and without color or right of law, issued the following bulletin:

"F. I. D. 100. Issued December 10, 1908.

United States Department of Agriculture,

OFFICE OF THE SECRETARY,

BOARD OF FOOD AND DRUG INSPECTION.

FOOD INSPECTION DECISION 100.

BLEACHED FLOUR.

"Flour bleached with nitrogen peroxide, as affected by the Food and Drugs Act of June 30, 1906, has been made the subject of a careful investigation extending over several months.

"A public hearing on this subject was held by the Secretary of Agriculture and the Board of Food and Drug Inspection, beginning November 18, 1908, and continuing five days. At this hearing those who favored the bleaching process and those who opposed it were given equal opportunities to be heard.

"It is my opinion, based upon all the testimony given at the hearing, upon the reports of those who have investigated the subject, upon the literature, and upon the unanimous opinion of the Board of Food and Drug Inspection, that flour bleached by nitrogen peroxide is an adulterated product under the Food and Drugs Act of June 30, 1906; that the character of the adulteration is such that no statement upon the label will bring bleached flour within the law; and that such flour cannot legally be made or sold in the District of Columbia or in the Territories; or be transported or sold in interstate commerce; or be transported or sold in foreign commerce except under that portion of section 2 of the law which reads:

"* * * Provided that no article shall be deemed misbranded or adulterated within the provisions of this act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; * * *

"In view of the extent of the bleaching process and of the immense quantity of bleached flour now on hand or in process of manufacture, no prosecutions will be recommended by this Department for manufacture and sale thereof in the District of Columbia or the Territories or for transportation or sale in interstate or foreign commerce, for a period of six months from the date hereof.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *December 9, 1908.*"

The promulgation and circulation of this bulletin, the relator states, has worked irreparable harm and injury to it, and in effect deprived it of its property without due process of law "in that since the issuance and promulgation of said unlawful decision aforesaid by the respondent herein, and by reason thereof your petitioner has been unable to sell its patented process and apparatus aforesaid, the prospective purchasers of said patented process and apparatus aforesaid, refusing to buy and install the same for fear that they or their customers will, upon the recommendation of the Secretary of Agriculture, be prosecuted for manufacturing or selling an adulterated food product in violation of the provisions of said Food and Drugs Act, June 30, 1906." The petition closes with a prayer that the writ of mandamus issue to compel the Secretary of Agriculture to withhold recommendation of prosecutions against manufacturers of and dealers in flour bleached by said Alsop Process; to revoke, cancel and annul said decision of said Secretary, and not to deliver or circulate additional copies thereof, and that the Secretary of Agriculture be commanded to proceed relative to the subject of bleached flour in strict conformity with said Food and Drugs Act and the regulations of the Department promulgated thereunder.

A rule to show cause was issued. In the answer filed by the Secretary he states "that it does not appear by the said petition that the said relator has any right, title, or interest in the matters affected by the judgment and action of your respondent referred to in the said petition, and is not a party to nor legally interested in the proceedings in which said judgment and action of your respondent have been made." He admits the relator owns the patent known as the "Alsop Process" for bleaching flour, but claims that its patented rights are wholly collateral to the right of said Secretary of Agriculture to decide whether flour bleached by the use of nitrogen peroxide is deleterious and adulterated within the meaning of said Food and Drugs Act; that the patenting of said process confers no right on relator and gives it no status to compel the respondent to change or revoke his decision that flour so bleached is adulterated. The answer denies that the effect of flour by the use of said process is as stated in the petition; on the contrary, the answer states "that the flour which is bleached is reduced and lowered in its quality and strength; that the said flour is so artificially colored as to conceal inferiority, and that it contains a poisonous and deleterious ingredient which has been added, and that the said flour is deleterious and injurious to

health." The respondent in his answer further says "that the bleaching of the said flour is effected by nitrogen peroxide, and that the resultant product is deleterious and is adulterated within the meaning of the aforesaid Food and Drugs Act approved June thirtieth, 1906"; that for many months prior to November 18, 1908, the respondent had made an exhaustive inquiry into the character, composition and purity of bleached flour and had caused the matter to be investigated exhaustively by the Bureau of Chemistry of his Department, and "that from all the evidence adduced it was conclusively established that flour bleached with nitrogen peroxide was adulterated within the meaning of said Food and Drugs Act"; that in the exercise of abundant caution, however, the Secretary decided to renew the investigation and to consider the matter more fully before finally deciding under the authority of said Act whether said bleached flour was adulterated; that accordingly he issued a notice for said public hearing; that this hearing was entirely advisory; and that the millers and manufacturers and others who attended did so voluntarily. The result of this hearing, the Secretary says, was to put him in possession of further and additional evidence relative to the subject; that this hearing was authorized both impliedly by the provisions in said Food and Drugs Act and expressly by the provisions of the Agricultural Appropriation Act of Congress of May 23, 1908; that after due consideration he decided that flour bleached by the use of nitrogen peroxide is adulterated within the meaning of said Food and Drugs Act and forbidden by the terms of said Act, and that he thereupon announced and published said decision of December 10, 1908; that this decision in no wise mentioned or in any way relates to the relator, and that, therefore, it has no status to seek any relief or redress in connection therewith. The Secretary in his answer denies the averments of the petition that his action was without right or color of law, denies the jurisdiction of the court to grant the writ, and states that he "passed no judgment upon the machinery of the relator, and has no jurisdiction over the same, nor concern therewith. The said relator is not an owner of bleached flour nor a manufacturer of the same. The judgment of the said respondent has to do only with the bleached flour, the product itself, and has no jurisdiction over or concern in one of the kinds of process by which the said product may be secured. And respondent submits that the claims of the said relator are wholly collateral, and that its petition fails to show any legal damage."

To this answer a demurrer was filed, which was overruled, and, relator choosing to stand upon its demurrer, final judgment was entered, and this appeal taken.

The first question to be disposed of is whether the interest of the relator in the subject matter involved is of such a nature as to entitle it to maintain this proceeding. The decision of the Secretary of Agriculture, which is here sought to be challenged, is to the effect that flour bleached by nitrogen peroxide is an adulterated product under said Food and Drugs Act. Neither the relator nor its process is mentioned in this decision. The relator is neither the owner nor the manufacturer of bleached flour. Its sole excuse for attempting to stay the hand of the Secretary is that since the promulgation of this decision by the Secretary it has been unable to sell its patented process and apparatus owing to the fear of prospective purchasers that upon the recommendation of the Secretary they will be prosecuted for manufacturing or selling an adulterated food product.

Whilst it is true that there is a distinction between cases where the extraordinary aid of mandamus is invoked merely for the purpose of enforcing or protecting a private right and cases where the purpose of the application is the enforcement of a purely public right, the people at large being the real party in interest (High on Extraordinary Remedies, Parg. 430; 26 CYC 404 and cases there cited), it has never been held, at least to our knowledge, that such an indirect and collateral interest as is here shown will sustain a petition for the writ.

Union Pac. R. R. Co. *v.* Hall, 91 U. S. 343, and Board of Liquidation *v.* McComb, 92 U. S. 531, in our opinion, do not sustain appellant's contention that it has a suffi-

cient interest to entitle it to institute this proceeding. In the former case it was held that merchants in Iowa having frequent occasion to receive and ship goods over the Union Pacific Railroad Company might, without the intervention of the Attorney-General of the United States, institute a proceeding under an act of Congress which conferred upon the proper circuit court of the United States jurisdiction to hear and determine all cases of mandamus to compel said railroad company to operate its road as required by law. It will thus be seen that a duty was laid upon the railroad company to operate its road in the interests of the public. Its failure in that regard wrought a direct injury to the merchants who were permitted to institute proceedings. The court went no further than to hold that the writ of mandamus may be issued at the instance of a private relator in all cases "where the defendant owes a duty, in the performance of which the prosecutor has a peculiar interest," and also "in case of applications to compel the performance of duties to the public by corporations." In the latter case the relator was the holder of bonds directly affected by the funding act, the carrying out of which he sought to have restrained.

We have carefully examined the other cases cited by relator on this point, and find that they go no further than the cases above reviewed.

The relator as a corporate entity has no interest in the enforcement of duties owing by the Secretary to the public. It seeks to arrest the operations of an Executive Department of the Government solely because the indirect effect of the promulgation of an opinion by the head of that Department has been to cause millers to cease purchasing relator's machinery. In all the cases relied upon by relator mandamus was granted to secure to the relators rights which they were entitled personally to enjoy. Measured by this test, it is apparent that the relator has no such interest in the subject matter of this controversy as to entitle it to the writ. Being neither an owner nor a manufacturer of bleached flour, its legal rights were not involved or invaded by the action of the Secretary. It is a mere volunteer in this proceeding and as such is without standing.

There is some analogy between a suit in equity for the abatement of a public nuisance and the present case. Yet it is well settled that such a suit will not be sustained unless the complainant shows special, direct, and material damages; Georgetown *v.* Alexandria Canal Co., 12 Peters, 91; Irwin *v.* Dixon et al., 9 How. 9; State of Penna. *v.* Wheeling Bridge Co. et al., 13 How. 518; Miss. & Mo. R. R. Co. *v.* Ward, 2 Black, 485. In the case last cited it was said: "A bill in equity to abate a public nuisance, filed by one who has sustained special damages, has succeeded to the former mode in England of an information in chancery, prosecuted on behalf of the Crown, to abate or enjoin the nuisance as a preventive remedy. The private party sues rather as a public prosecutor than on his own account; and unless he shows that he has sustained, and is still sustaining, individual damages, he cannot be heard."

The rule permitting private parties, whose rights are directly jeopardized, to maintain mandamus to compel a public duty is a salutary one, but it should not be enlarged to such an extent as to permit interference with the operations of the Government by those whose rights are only remotely and indirectly affected.

Having determined that the relator's interest in the subject matter involved is too remote to entitle it to institute this proceeding, it becomes unnecessary to consider any other question.

The order is, therefore, affirmed, with costs.

CHAS. H. ROBB,
Associate Justice.

AFFIRMED.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

F. & D. No. 1306.
I. S. No. 26116-a.

Issued August 30, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 499, FOOD AND DRUGS ACT.

MISBRANDING OF ANDERSON'S COMPOUND JAM.

On or about May 14, 1909, John Boyle & Co., Inc., Baltimore, Md., shipped from the State of Maryland to the State of Louisiana a consignment of a food product labeled "Anderson's Compound Jam." Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report made indicated that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded John Boyle & Co., and the party from whom the samples were procured, opportunities for hearings. As it appeared after hearings held that the said shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the District Court of the United States for the District of Maryland against said John Boyle & Co., charging the above shipment and alleging that the product, shipped as aforesaid, was misbranded, in that the label represented it to be a blend or compound containing "Fruit 30%, Sugar 20%, Apple Juice 25%, Glucose 25%", which statement was false and misleading, because the article contained an amount of glucose in excess of said 25 per cent, to wit, 45.7 per cent.

On March 26, 1910, the defendant entered a plea of guilty to the information, whereupon the court imposed a fine of $20.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52105°—No. 499—10

F. & D. No. 1162.
I. S. No. 4757-b.

Issued August 30, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 500, FOOD AND DRUGS ACT.

MISBRANDING OF LEMON EXTRACT.

On or about July 14, 1909, the California Perfume Company, New York City, shipped from the State of New York to the State of Kentucky a consignment of a food product labeled "California Flavoring Extract Lemon." Samples from this shipment were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report made indicated that the product was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the said California Perfume Company, and the dealer from whom the samples were procured, opportunities for hearings. As it appeared after hearings held that the above shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the Circuit Court of the United States for the Southern District of New York against said California Perfume Company, charging the above shipment and alleging that the product, shipped as aforesaid, was misbranded, because the label above set forth was false and misleading, the product being, in truth and in fact, a dilute terpeneless extract of lemon, with artificial coloring, which was not declared, and because the label in question represented each bottle to contain "4 oz." when, as a matter of fact, the quantity contained in said bottles was over 6 per cent short of the volume stated.

The case coming on for hearing, the defendant appeared by its treasurer and filed a plea of guilty to the information, whereupon the court imposed a fine of $10.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52105°—No. 500—10

FOODS.

DRUGS AND MEDICINAL AGENTS.

O

F. & D. No 616.
I. S. No. 10197-a.

Issued August 30, 1910.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 501, FOOD AND DRUGS ACT.

MISBRANDING OF A DRUG PRODUCT—DAMIANA NERVE INVIGORATOR.

On or about December 12, 1908, Steinhardt Bros. & Co., a corporation, New York City, shipped from the State of New York to the State of Massachusetts a consignment of a drug product labeled "Damiana Royal Brand Celebrated Nerve Invigorator." Samples of this product were procured and analyzed by the Bureau of Chemistry, United States Department of Agriculture, and as the findings of the analyst and report made indicated that the drug was misbranded within the meaning of the Food and Drugs Act of June 30, 1906, the Secretary of Agriculture afforded the said Steinhardt Bros. & Co., and the dealer from whom the samples were procured, opportunities for hearings. As it appeared after hearings held that the above shipment was made in violation of the act, the Secretary of Agriculture reported the facts to the Attorney-General, with a statement of the evidence upon which to base a prosecution.

In due course a criminal information was filed in the Circuit Court of the United States for the Southern District of New York, charging the above shipment and alleging that the product, shipped as aforesaid, was misbranded, in that the label on the bottle containing the said drug failed to bear a statement of the quantity or proportion of alcohol therein, alcohol being in fact one of the ingredients thereof; and in that the label, as above set forth, was false and misleading, because "Damiana" was not one of the ingredients or substances contained in said bottle.

The case coming on for hearing, the defendant entered a plea of not guilty, and a jury trial was had, resulting in a verdict of guilty, whereupon the court imposed a fine of $200.

This notice is given pursuant to section 4 of the Food and Drugs Act of June 30, 1906.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 25, 1910.*

52105°—No. 501—10